Public Utilities

FORTNIGHTLY

November 9, 1944

THE FOUR FREEDOMS FOR THE PUBLIC UTILITY ENTERPRISE

By Francis X. Welch

« »

Public Relations—Today's Opportunities for Utilities

By E. Cleveland Giddings

« »

Utilities in the War Zones

By A. E. Perks

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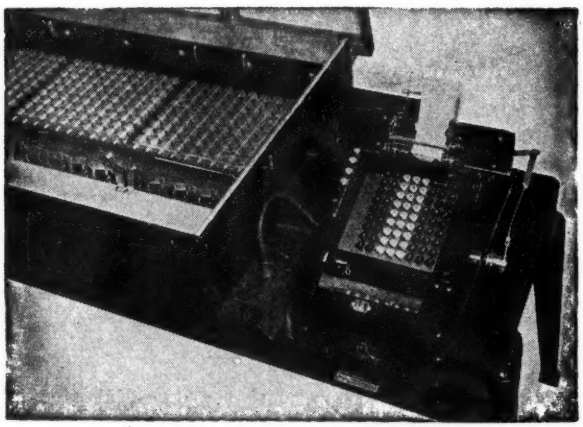

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Public Utilities Fortnightly

VOLUME XXXIV *November 9, 1944* NUMBER 10

Contents of previous issues of PUBLIC UTILITIES FORTNIGHTLY *can be found by consulting the "Industrial Arts Index" in your library.*

Advertising Section

¶ *This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is supported by subscription and advertising revenue; it is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.*

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Pages with the Editors

PERHAPS it is not very polite to compare the status of public relations enjoyed by the various members of the public utility family —gas, electric, telephone, transit, and so forth. But any attempt to deal with the subject of public relations requires above all a realistic approach. This, we feel, is perhaps the principal virtue of the article in this issue by E. CLEVELAND GIDDINGS (beginning page 618), who happens to be assistant to the president of the Capital Transit Company of Washington, D. C. Needless to say, his work for that company deals largely with its public relations.

MR. GIDDINGS is frank enough to state his own belief that the telephone industry has perhaps done a little better job than some other members of the public utility family in the realm of sustaining and improving its public relations. It is no secret that a good many public utility officials outside of the telephone industry share that view. And without laboring the comparison to the point of being odious, the circumstances underlying the situation become quite interesting upon further analysis.

WE were discussing this very point with a telephone official recently. He made a provocative statement to the effect that the public relations of the telephone industry are probably good, because of intensive cultivation resulting from the industry's recognition of the fact that it *needs* good public relations—perhaps more than the other utility industries. Of course, all public utility business *needs* good public relations, and is likely to find itself in a difficult position if such relations deteriorate. But what our telephone friend was trying to point out was that his business is particularly vulnerable to the penalties which follow in the wake of poor public relations. These can be grave indeed if political complications set in.

WE naturally asked why. He said that the test was a simple one—the test of Dispensability, as he called it. In practice it works something like this:

"How much was your electric bill last month, or on the average?" the telephone man asked.

IT so happens that we live in a typical 8-room residential home with the usual accoutrement of appliances. The answer was "between $2.50 and $3."

E. CLEVELAND GIDDINGS

A utility cannot escape having some kind of public relations, whether good, bad, or indifferent.

(SEE PAGE 618)

"ALL right, how do your gas bills run?"

IT so happens we use an automatic hot water heater and gas cooking service typical to the residential development of our own city. The answer was "between $3 and $3.50."

"How much is your telephone bill, not counting toll calls or any other extras?"

THE answer was that for unlimited residential service in our community the monthly telephone bill amounts to $4.25, exclusive of Federal taxes.

"Now comes the test of Dispensability," continued the telephone man. "If, by some fantastic circumstance, you were faced with the absolute necessity of doing without one of these services and retaining the other two—understand, not on grounds of being able to afford the service, but purely on the grounds of your need for it—which would you eliminate first?"

WE thought about this a minute. We recalled our youthful days when we seemed to get along fairly well without a telephone as compared with the other necessities and sheep-

ishly admitted that the telephone would be the first of the three utility services to go. Upon pressing the inquiry one step further, we admitted that the gas would have to go next because, under the "fantastic" hypothesis, we might still be able to cook with electricity or other fuels. Electricity, we decided, would be the last to go because our home is so organized on an electrical basis with all the appliances, the operation of the oil burner, the radio, and the elementary convenience of electric light, that any sort of comfortable living without it, in our city at least, would be unthinkable.

"THERE is your reason," said the telephone man. "The three utility services you mentioned are dispensable in the reverse order of their expense. Your choice is fairly typical of what other citizens would say who live in average large cities. Of course, the order of expense might vary in smaller cities so that the telephone would, in the rural communities, perhaps be least expensive. The telephone business labors under the further disadvantage of being unable to lower rates very much as the use of service increases; and must often increase rates as the size of the community increases—almost the opposite from gas and electric service."

IT was suggested, thereupon, that the telephone industry had rightly decided, many years ago, that its best protection against the slings and arrows of changing economic fortunes would be to secure the continuous loyalty and friendship of its customers. It set out to do this in every way possible and its present estate testifies to the success of its undertaking. Thus, industrywise we have, today, the paradox of the most indispensable utility service—for the average city dweller at least—often suffering from such difficult public relations that it is occasionally necessary to defend its very managerial existence from the onslaughts of agitation for changes in ownership by public acquisition.

MEANWHILE, the perhaps more dispensable and often more expensive telephone service goes on enjoying such high public esteem that the matter of public ownership is rarely if ever mentioned. Certainly the explanation for this paradox cannot be contained in the old political arguments about lower rates. A more logical explanation would seem to be, in part at least, traceable to careful, continuous, and patient cultivation of the good will and loyalty—not only of the subscribing public but, more immediately, of the industry's own employees.

EARLY this year Charles F. Mason, then president of the United States Independent Telephone Association, at a spring conference of that body in Chicago, made a very pithy remark which is well worth the reflection of anybody seriously interested in public utility business of any kind. He said: "I don't recall that I have ever seen a case of a (utility) company having good public relations and poor employee relations. Conversely, I have never seen a case of good employee relations and poor public relations. I think we are, therefore, justified in concluding that good public relations and good employee relations are simply the reverse sides of the same coin and, accordingly, ought to be treated as an integral problem."

LEAVING this somewhat delicate field of comparing public relations of one utility industry with another, it certainly is within the common knowledge of any experienced utility or regulatory official that an especially low rate does not automatically mean good public relations. Vice versa, a higher than average rate does not necessarily mean poor public relations. It goes without saying, of course, that whatever the rate happens to be, the customers must be satisfied that it is reasonable. That is perhaps a *conditio sine qua non* of good public relations. But it is not the whole answer by a long shot.

PERHAPS more attention to these other contributing factors of good public relations, particularly the contented and loyal employee angle, would go a long way to offset disturbances in public relations which result from a mere comparison of rates *per se*. This is especially important to the electric power industry which, for a number of years, has been operating under a periodical rate comparison X-ray, taken and well publicized by the Federal Power Commission. There can be no great objection to such rate comparisons, as such. It is quite conceivable that they can be valuable as a double-check, to bring to light extreme situations—always providing, of course, that due allowance is made for extenuating circumstances.

IN the leading article in this issue by a member of our own editorial staff, FRANCIS X. WELCH, considerable point is made of the fact that allowance is not always made for extenuating circumstances in the government's dealing with private utilities.

A. E. PERKS, whose article on utilities in the war zones begins on page 625, is the Montreal correspondent for the *Montreal Daily Star*, who has previously written for this publication.

THE next number of this magazine will be out November 23rd.

The Editors

In This Issue

In Feature Articles

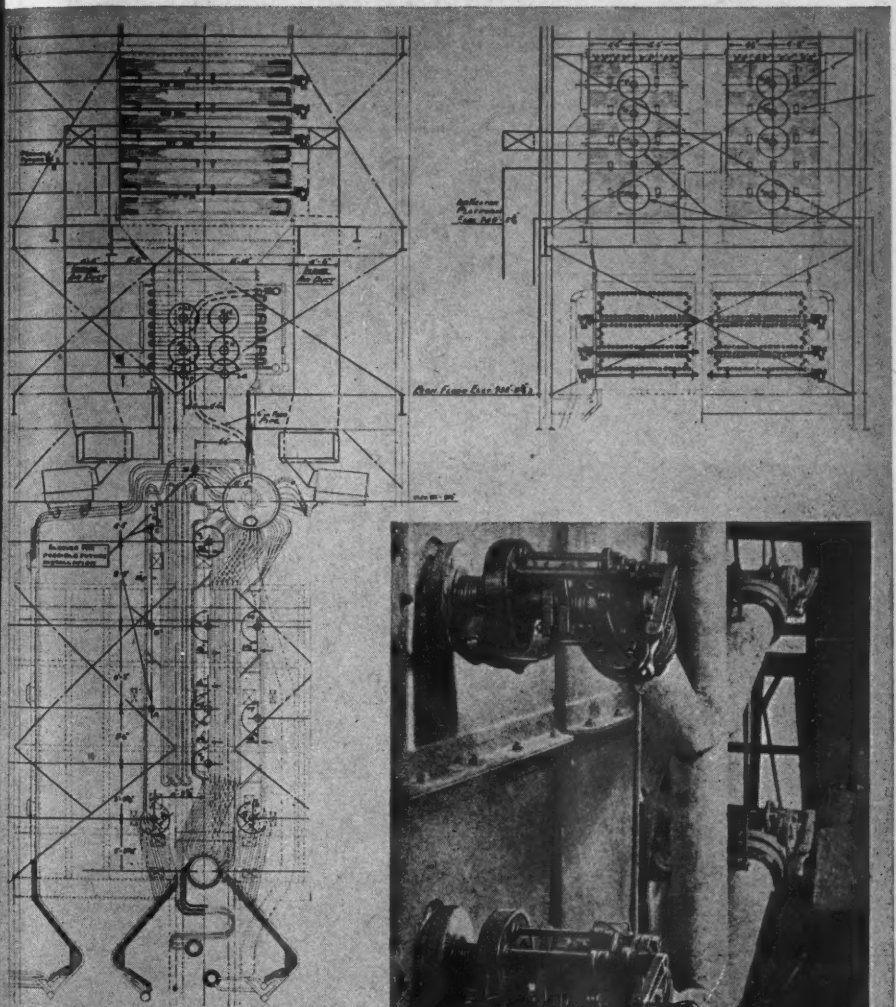
In Financial News

In What Others Think

In The March of Events

In The Latest Utility Rulings

VULCAN ENGINEERED SOOT BLOWER INSTALLATIONS



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Governor of California.

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Chairman, Democratic National Committee.

"It is no reflection on a man to admit that he is not a great statesman. It is no very harsh criticism of a man to point out that he does not qualify for the office of President of the United States."

THOMAS E. DEWEY
Governor of New York.

"We must not merely defeat the armies and navies of our enemies. We must defeat, once and for all, their will to make war. In their hearts as well as with their lips let them be taught to say: 'Never again.'"

EDITORIAL STATEMENT
The New York Times.

"The principal need for world currency stabilization is sound internal policies in each country, not more international machinery. Each nation must want a stable currency enough to accept its necessary consequences."

EDITORIAL STATEMENT
The Saturday Evening Post.

"One sarcastic outlander has already come up with an explanation [of the New York t ansit difficulty]: 'Why do New Yorkers insist on a nickel fare? Because it's the only thing in their city that you can't put on the cuff.'"

EDITORIAL STATEMENT
Railway Age,

"If, as current trends forecast, operating expenses and taxes take 90 per cent of railway gross earnings in 1944, the remaining 10 per cent will be the smallest percentage of gross earnings ever left for net operating income in any year in railway history."

DAVID E. LILIENTHAL
Chairman, Tennessee Valley Authority.

"The danger [of the future] is that we will allow our energies and our driving vitality to be consumed in violent controversy over meaningless slogans and catch-phrases, by name calling over vague abstractions—undefined phrases such as 'free enterprise,' 'collectivism,' 'reactionary,' or 'radical.'"

SAM RAYBURN
Speaker, U. S. House of Representatives.

"I want to see this greatest of all democracies [United States] do a man's part in the world's great work of peace."

JOHN W. BRICKER
Governor of Ohio.

"Our country, I am convinced, is at the threshold of its greatest era. I reject the theory that ours is a decadent society, that opportunity no longer exists, that as a free country we are through and that our lives must be regimented from cradle to grave and that a sparse existence based on scarcity of production be doled out to each of us. I denounce that defeatist line. . . . I say America is just beginning to grow."

CHESTER BOWLES
Director, Office of Price Administration.

"Our people are overwhelmingly in favor of a system in which the efficient will thrive and the productive and the resourceful can find rewards commensurate with the contribution they can make to our society. To attain this goal, it is imperative that a market be maintained for all who can produce and that job opportunities be provided for all who are able and willing to work. The free enterprise system can never fulfill its promise unless this is done."

DONALD M. NELSON
Former chairman, War Production Board.

"Now, as in 1942, every group interest that does not coincide with the national interest has to be submerged. It is against the national interest for business concerns to begin jockeying for competitive postwar position. The nation cannot now afford to have the minds which run American business swing away from urgent war problems to postwar markets, any more than it can afford to have workers leave war jobs in order to look for jobs in the civilian economy."

WILLARD H. DOW
President, Dow Chemical Company.

"The nation and we as individuals must realize that we can live as we exchange our products with customers and the customers must have something to exchange. We must be free customers, men and women who can go to the market place and buy or not buy exactly as we wish. If government offices may dictate our lives as customers, they will be compelled to dictate our lives as producers, which means we shall work where, when, and at what wage the bureaucrats will."

G. L. DELACY
President, Nebraska Bar Association.

"We are living during the greatest military crisis since Napoleon. We are living during the greatest economic crisis since Adam Smith. We are living during the greatest social crisis since the fall of the Roman Empire. It is apparent that there must have been a profound fault in the economic, social, and political structure of the world to have caused this crisis, and that such fault cannot be eradicated unless we remove, in part, old attitudes, old notions, and old valuations."

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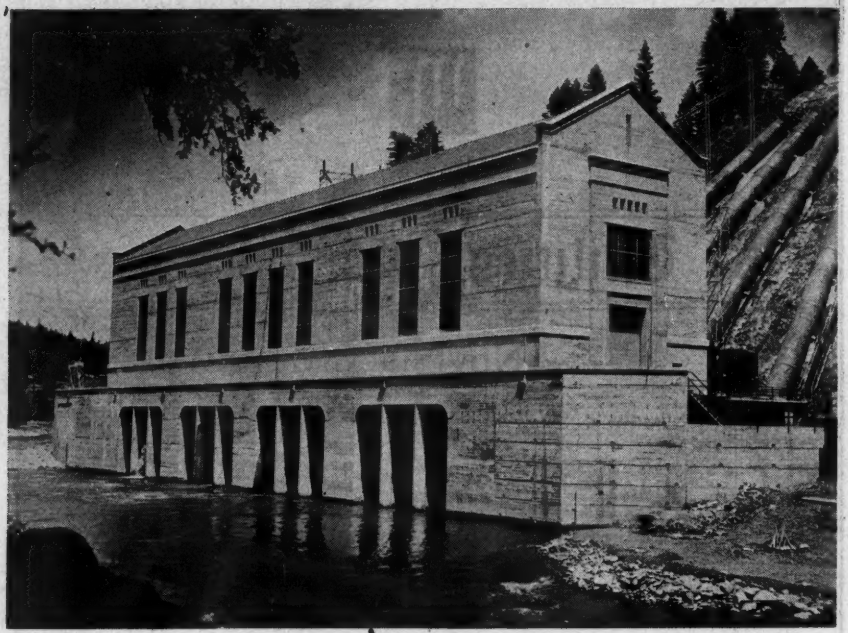
Utilities Almanack

Due to wartime travel restriction, conventions listed are subject to cancellation.

NOVEMBER

9	T[h]	¶ *Pacific Coast Electrical Asso., Northern Sec., starts meeting, San Francisco, Cal., 1944.* ¶ *Southeastern Electric Exchange starts conference, Atlanta, Ga., 1944.*
10	F	¶ *International Business Conference opens session, Rye, N. Y., 1944.*
11	S[a]	¶ *Oklahoma Telephone Association will hold session, Oklahoma City, Nov. 27, 28, 1944.*
12	S	¶ *American Society of Mechanical Engineers will hold meeting, New York, N. Y., Nov. 27-30, 1944.*
13	M	¶ *Alabama Independent Telephone Association convenes, Montgomery, Ala., 1944.* ¶ *North Carolina Independent Telephone Asso. starts meeting, Southern Pines, N. C., 1944.*
14	T[u]	¶ *National Association of Railroad and Utilities Commissioners opens meeting, Omaha, Neb., 1944.*
15	W	¶ *National Exposition of Power and Mechanical Engineering will be held, Nov. 27–Dec. 2, 1944.*
16	T[h]	¶ *American Water Works Association, Florida Section, opens meeting, St. Petersburg, Fla., 1944.*
17	F	¶ *Great Lakes Power Club starts fall meeting, Chicago, Ill., 1944.*
18	S[a]	¶ *American Standards Association will hold meeting, New York, N. Y., Dec. 8, 1944.*
19	S	¶ *American Water Works Association, New York Section, will hold meeting, New York, N. Y., Jan. 17, 1945.*
20	M	¶ *American Institute of Electrical Engineers will hold meeting, New York, N. Y., Jan. 22–26, 1945.*
21	T[u]	¶ *Missouri Telephone Association convenes for session, Kansas City, Mo., 1944.*
22	W	¶ *Insurance Economics Society of America will hold annual meeting, Chicago, Ill., Feb. 7, 8, 1945.*



Fortress of Public Service

"California's greatest hydroelectric plant"—Pit 5, of the Pacific Gas and Electric Company

Public Utilities
FORTNIGHTLY

VOL. XXXIV; No. 10 NOVEMBER 9, 1944

The Four Freedoms for the Public Utility Enterprise

They should be, in the opinion of the author, (1) freedom from tax discrimination, (2) freedom from regulatory discrimination, (3) freedom from unfair competition, and (4) freedom from unfair labor practices.

BY FRANCIS X. WELCH

THE Atlantic Charter was an intelligent and sincere effort to reduce to a simple form the war aims of the United Nations. It was to assure the fighting men and their families that they were fighting for something that meant more to them personally than any other thing that any power on earth could bestow. It was to hold up a priceless heritage of hope and security which the humblest citizen could see and instantly recognize as being something worth fighting for—and dying for, if necessary. In simple terms, it was spelt out as the Four Freedoms—freedom of speech, freedom of worship, freedom from want, freedom from fear.

The individual soldier, sailor, or marine naturally interprets these four freedoms in terms of his own personal aspirations. To one it may be the desire to get back to his old job, or find a new and better one. To another it may be to get back to his old home and loved ones, just as he left them. To an-

other, it might be the desire to get back and see that considerable change is made for the better. But however interpreted, the Four Freedoms are essentially a symbol of a reward which a democratic civilization holds up to those—whatever their stations at the front, in the factory, or at home—who have fought the good fight and are therefore entitled to such fruits of victory.

The public utility industries of the United States have also fought the good fight. Everybody of consequence says so. High-ranking Army and Navy officers, J. A. Krug, head of the War Production Board, and formerly charged with mobilizing the power and light of the public utilities for the war effort, and various other authorities in and out of government have paid high compliments to the work of our gas, electric, telephone, and transit companies.

Individual companies have been awarded citations of merit for services performed above and beyond the call of duty. They have been congratulated for carrying the double burden of war, superimposed on civilian traffic, with reduced man power and materials and no increases in price or rates for service.

ALL of this is well known, and the only point in bringing up such old stuff is to raise the fair question whether public utilities are going to get anything in the way of a reward for fighting the good fight. In other words, what can we say that the American public utilities have been fighting for? What can we say the future holds in store for them? What has made it worth their while to put forth such prodigious efforts in the war effort?

If we face the present situation squarely, we must admit that as far as the American government is concerned the outlook for public utilities is far different from that of other veterans on the home front who have fought the good fight, along with those who will return from the combat areas.

Congress has labored mightily and rightly so to give some comfort to the returning men of the armed forces with the GI Bill of Rights. It has sought and is still seeking to aid and encourage our great industries generally to return to a peace economy without unnecessary dislocation, through the enactment of the Reconversion Bill, Surplus War Property Act, and the forthcoming, promised relief from the skyscraping burden of war taxes on corporations. It has sought to aid and encourage small business, organized labor, the farmers, and other groups who have contributed nobly in the nation's drive for victory.

But the reward facing the utilities, as present laws and practices stand, is likely to be the bitter tea of discrimination, discouragement, and in some instances outright dissolution. Probably the quickest way to bring a frown to a Congressman's face or a smile to a Federal bureaucrat's face is to mention relief for public utilities. It would seem that they are not only supposed to march at the tail end of the victory parade, but even raise their hands as they pass the reviewing stand and repeat the classic greeting of the ancient Roman gladiators: "We who are about to die salute you!"

SPECIFICALLY, American public utilities face, as they have faced in the

past, four classes of grossly unfair and burdensome discrimination from the hands of their government. If anyone were interested in writing a utilities' Bill of Rights, or a "Four Freedoms for the Utilities" — and this writer must hasten to add that nobody at all has as yet shown the slightest interest in that respect—just for the record, it could be stated as follows:

1. Freedom from tax discrimination
2. Freedom from regulatory discrimination
3. Freedom from unfair competition
4. Freedom from unfair labor practices

Note that all of these suggested "freedoms" involve protection from unfair or *preferential* treatment, which might be summed up in a single phrase, chiseled in the marble apse of the U. S. Supreme Court building in Washington, D. C., "Equal justice under the law."

In other words, utilities, generally speaking, seek no special relief, as such, in the form of favors, additional profits, or other positive rewards and premiums which the government may rightly see fit to bestow on other classes and interests who did their duty when the going was tough. No, the utilities, generally speaking, would be perfectly willing to settle for equal treatment, a square deal, an opportunity to be treated on the same level with other comparable interests. They seek not medals nor bonuses nor banquets — merely to be let out of the doghouse.

This is general language, of course. So let's get down to cases and see wherein the utilities are systematically and unjustifiably being subjected to discrimination at the hands of their government.

I. *Freedom from Tax Discrimination*

SUPPOSE you picked up your morning newspaper and read that the Federal government, by authority of act of Congress, was going to exempt from payment of taxes on cigarettes the residents of the following towns: Los Angeles, Cleveland, Seattle, all cities in Tennessee, Jacksonville, and dozens of other hand-picked communities, while the cities of New York, Chicago, Philadelphia, Detroit, Pittsburgh, Boston, Baltimore, Washington, and approximately nine out of every other ten cities in the United States would have to go on paying the Federal tax on their smokes.

We can readily imagine what a storm of protest would go up from the

"INDIVIDUAL *companies have been awarded citations of merit for services performed above and beyond the call of duty. They have been congratulated for carrying the double burden of war, superimposed on civilian traffic, with reduced man power and materials and no increases in price or rates for service. All of this is well known, and the only point in bringing up such old stuff is to raise the fair question whether public utilities are going to get anything in the way of a reward for fighting the good fight.*"

smokers. Indignant editorials would snap and crackle. Radio commentators would volley and thunder. Congressmen, representing the nontax-exempt communities would hide in the bushes for their stupidity in ever letting the tax-exempt bloc put such an obvious trick over on them.

That is exactly what is happening today with respect to the Federal tax on the sale of electricity for residential use. Publicly owned plants serving such communities as Los Angeles, Cleveland, Seattle, etc., are specifically exempt from the payment of the 3 per cent Federal tax, while customers of privately owned electric utilities, serving most of our American cities and nearly all of the larger ones, have to pay this tax.

There has never been a sensible or defensible argument advanced to justify this shameful inequity. There has been a good deal of quibbling. It is pointed out, for example, that the terms of the revenue law make this tax payable by the utility rather than its customers, which—even if it were true in final effect as well as in form (which it is not)—would be just as indefensible. What moral right has the Federal government to distinguish between corporations engaged in public utility enterprise and municipalities engaged in the same type of enterprise, where such a distinction results in local benefit for the latter at the expense of the general tax burden of the entire nation?

BUT the irony of this discriminatory tax policy is that, in effect, the private utilities do not pay this tax themselves, no matter what the statute says to the contrary. Anybody familiar with tax legislation recognizes that when Congress said the 3 per cent tax should be paid by the electric utilities rather than directly by the customer (as in the case of the 10 per cent excise tax charged against monthly telephone bills), it was simply resorting to the old politically convenient game of indirect taxation—covering up a tax so as to make its extraction less painful because the citizens forget they are paying it, if they ever knew.

Actually, no one will deny that the citizens of New York, Chicago, Philadelphia, etc., *do* pay this tax on their electricity, for the simple reason that the electric utilities are not in business for the fun of it. They merely charge the tax against operating expense and become a tax collector. Net result is that the New Yorker pays the tax; the Los Angeles citizen gets out of it. Why?

Legalistic apologists trot out the old constitutional argument that the Federal government may not validly tax a political subdivision of a state, such as the city of Los Angeles. The answer to that is that the Federal government does not have to tax such public agencies. It would be still collecting the same tax from all electric users if Congress, a decade ago, had left the original 3 per cent electric tax on the statute books the way it was put there. It was put there in the same form as the telephone bill tax and the railroad fare tax and the telegraph tax and dozens of other excise taxes are now collected.

AS a separate excise tax payable by the electric consumer, the Los Angeles citizen would have to pay the same as the citizen of New York,

Four Freedoms for Utilities

1. *Freedom from tax discrimination*
2. *Freedom from regulatory discrimination*
3. *Freedom from unfair competition*
4. *Freedom from unfair labor practices*

which is the way it ought to be, but isn't. And there would have been no constitutional argument about it. But in its effort to conceal the tax, Congress of a decade ago opened wide the doors of exemption for public ownership—which were already pretty wide open.

That leads us to other forms of tax exemption which Federal, state, and municipal agencies, as well as rural electric coöperatives, enjoy, while engaged in utility or quasi utility activities from which unfair economic comparisons are drawn at the expense of private tax-paying enterprise.

Summarizing, these taxes fall into three general categories:

1. Real estate, franchise, all occupational taxes;
2. personal, property, and income taxes, including excess profits taxes;
3. taxes on income from securities issued by or in support of the operating agencies.

In the postwar period ahead the third class of tax discrimination is probably the most unfair of all for private enterprise in the public utility business. With taxes assuming a more and more important place in our over-all economic pattern, the tax-exempt feature of securities issued in support of public agencies operating their own utility service makes them such an outstanding attraction for the investor that private enterprise cannot hope to sell its securities on anything like even terms.

THIS comes at the very time when large public utility holding company systems are being broken up by orders of the Securities and Exchange Commission and numerous properties, heretofore private, are being placed on the block for sale. The situation is almost made to order for cities and other public agencies to swing tax-exempt deals for the acquisition of these properties, because they have access to "tax savings" in the form of hundreds of thousands of dollars which investors in private enterprise would have to pay if they attempted to acquire these same properties.

To date, this hasn't made much of an impression in the over-all picture of

public *versus* private ownership in the electric power industry. But in the years ahead it might prove a very decisive factor in liquidating a large margin of private enterprise from the public utility field.

Granted, this problem is incidental to an issue of constitutional law—namely, the exemption of government agencies from taxation, which has drawn increasing criticism from statesmen and economists, including President Franklin Roosevelt, who has condemned the tax-exempt feature of local government securities as unsound. In fact, as far as the use of these securities to support public agencies engaged in "proprietary" functions — such as the public utility business — is concerned, the justification has been pretty well discredited. Trouble is, we don't do anything about it and are not likely to do anything about it until Congress gambles on another constitutional challenge in the hope that the Supreme Court may reverse a decision of many years' standing on this subject.

THERE is nothing, however, to prevent Congress and the state legislatures, each acting within its legislative sphere, from requiring public agencies in the public utility business to pay the same kind and amount of taxes as taxes which private companies would be obliged to pay under the same circumstances.

In 1943, according to the Federal Power Commission figures, class A and class B electric utilities in the United States paid $665,132,000 in taxes, representing 24 per cent of revenues. In the same period, the Bell Telephone system paid $449,000,000, or 27 per cent of gross revenue. How much taxes would the various public agencies engaged in similar enterprise have paid? No answer to such a question could be anything more than a guess, for the simple reason that utility operations of public agencies for the most part have not been assessed on a basis comparable to tax assessment of private utilities.

Some rough idea of the amount, however, might be gained from the fact that the Bonneville Administrator alone recently announced that sales from Bonneville-Grand Coulee power during the fiscal year of 1944 amounted to more than $20,000,000. Using the 24-per-cent-of-gross-revenue paid by the private electric industry as a gauge, the Bonneville Administration would have had to charge—if its operations were assessed for comparable taxes—about $26,000,000 for the same amount of current, so as to turn over about $6,000,000 in taxes.

IF, as is variously claimed, public agencies of different kinds are now doing 15 per cent of the electric power business in the United States, they ought to be turning over in the form of various payments for taxes — according to our 24-per-cent-of-gross-revenue formula—over $100,000,000 a year.

Of course, some attention must be given to the vague claims that such public agencies do turn over considerable sums, not so much in the form of taxes, but as contributions in lieu of taxes. The Tennessee Valley Authority, for example, turns over a certain percentage of gross receipts for business done in different states. During 1944, this amounts to 7 per cent. Eventually it will drop to 5 per cent and

stay there. Compare this with the 24 per cent paid by private industry and smile at any claim of "tax equality." This gross receipts percentage is not a tax—not only because its payment is voluntary, but also because it depends on the volume of business done, which has a tendency to fall off in hard times when it is needed the most by the local governments.

Few would contend that these payments, "in lieu of taxes," come anywhere near equaling the amount of taxes private utilities would have to pay if they were conducting the same volume of operations with properties of similar value today.

There has been a good deal of hypocrisy about so-called contributions which various public agencies make "in lieu of taxes," and it is a hypocrisy which is very quickly exposed whenever a serious effort is made to put these public agencies on exactly the same tax-paying basis as private enterprise.

If one will look in the very interesting and painstaking annual directory of municipal plant operations published by Burns & McDonnell Engineering Company—entitled "Results of Publicly Owned Electric Systems" (eighth edition, 1944)—one will find under the heading, "Taxes Paid to General Fund in Cash Donations," astonishing amounts which various municipal plants claim to have turned over, in cash or services, for the benefit of their local governments.

The Federal Power Commission, in a survey taken in 1936 (which for undisclosed reasons has never been repeated), reported that during that year privately owned utilities paid 13.2 per cent of the gross income in the form of taxes and cash contributions, while publicly owned utilities paid 17.3 per cent in the form of taxes and cash contributions—and, in addition, supplied free services amounting to 8.5 per cent—the total contribution of government units adding up to 25.8 per cent, or almost double the amount of taxes paid by private utilities. These remarkable figures were obtained by questionnaire methods, which the FPC no doubt compiled and supervised as carefully as it could.

Obviously the FPC was not and is not in a position to verify these claims because it has no jurisdiction over public agencies. The same might be said of the admittedly excellent annual studies and statistics assembled by Burns & McDonnell. No doubt contributions are made by municipal plants to general funds. In some cases, perhaps, these contributions exceed tax payments which would be imposed upon a private plant operating in that community. No doubt contributions are made in the other direction also, where municipal plants get the advan-

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tage of city facilities and city services, such as free legal and engineering advice, the use of city hall and other properties for office and shop space, motor vehicles, etc.

THE acid test is a proposal to give all these public agencies absolute credit for every nickel they contribute, through the simple expedient of placing their operations on a tax status comparable with private utilities. One would think that these agencies would welcome the chance of improving their record and taking credit openly for what is presently concealed in the vagueness of operations under tax exemptions. But always the answer is "no." Repeated attempts to make the public agencies pay even a portion of comparable taxes are defended in state legislatures by hard-working public ownership lobbies.

Sometime ago, when a Nebraska state court ruled that a public power district in that state was subject to county taxes, the late Senator Norris indignantly declared that such a tax policy would put the public power agencies out of business. This writer believes that Senator Norris was absolutely right and justified in his fears. But if these agencies were actually contributing as much money, and more, than the threatened tax liability, the Senator would have been wrong.

The realities of this situation were further disclosed when the Federal Works Agency, successor to the Public Works Administration, appeared in court in defense of the tax-exempt status of the Nebraska public district. FWA appeared in the rôle of bondholder on the old PWA loans. The Federal attorneys argued that the imposition of even the single county tax at issue in that case would have threatened default of the Nebraska public districts as profitable operations and that the Federal government might, under such circumstances, have to foreclose on its securities to protect the Federal Treasury's investment. This doesn't sound very much as if these public agencies were paying over twice as much money voluntarily as they would have to pay if they were assessed taxes.

The privately owned and operated public utilities of the United States are doubtless willing to stand by any unfair comparison that would be made as a result of equal taxation. As stated before, they seek no special advantage and, in all probability, would gladly settle for comparable treatment, dollar for dollar, let the advantage fall where it may. As long as public agencies resist and refuse to accept this simple challenge of equal taxation, they cannot be too surprised if generous claims about voluntary contributions in excess of comparable tax liability are taken by the skeptical observer with a grain of salt.

II. *Freedom from Regulatory Discrimination*

ONLY ten states even bother to place municipally owned and operated public utility companies under the regulatory supervision of their respective public utility commissions. As to rates, the following state commissions have such jurisdiction: Indiana, Maine, Maryland, Montana, Nevada, New York, Rhode Island, Vermont, West Virginia, Wisconsin, Wyoming.

About one-half dozen more have assumed rate jurisdiction over munic-

Tax Assessments

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ipal plant operations, outside of their corporate limits. Jurisdiction over municipal plant accounting practices is only slightly more widespread. This does not include jurisdiction over REA co-ops, which is legally debatable under the various statutes in almost every state—an important test on the subject is pending at this writing in Colorado. For obvious reasons, of course, the various state commissions have no jurisdiction whatever over agencies of the Federal government, such as the TVA, Bonneville Administration, Reclamation Bureau, Southwest Power Administration.

In a practical sense (considering the actual location of the more important municipal plants), publicly owned and operated utilities are generally without regulation and virtually free to do as they please throughout the United States, with the exception of the two important states of Wisconsin and New York. Even in those two states, the municipals have not taken to regulatory discipline very readily.

THIS was seen in various decisions of the New York and Wisconsin commissions attempting to straighten out certain financial practices of the municipal plants along lines comparable with private utility operations. It was pointed up more emphatically in the third "war conference" of the Municipal Electric Association of New York State, held September 26 and 27, 1944, where the demand was made for "more autonomy" in the administration and management of the municipally owned utilities. This association believes that local plant officials should be free to manage their own accounting, depreciation, and other problems, without "the interference of bureau-

cratic state agencies." The association's secretary, T. J. McKee, singled out the New York Public Service Commission for criticism in this respect.

Again we come to the question of discrimination: Why should the publicly owned and operated competitors or rivals of the private utility industry be let off scot free from rules, regulations, and supervision — admittedly burdensome at times—which private enterprise has accepted generally without question for many years? This disparity of treatment in some cases has even resulted in absurd situations, which ought to shock anyone's sense of justice.

There have been cases in which regulatory commissions have found themselves unable to protect private utilities from competitive rate cuts by municipal plants because they lack jurisdiction over the latter. If the situation were reversed, private utilities would be prevented from cutting rates below a noncompensatory level simply in order to obtain a temporary business advantage. One-sided regulation of this sort is something like handcuffing one party to a fist fight and letting the other party pour it on.

A couple of years ago, for example, a Tennessee city decided to install a municipal plant in competition with an electric company and thereafter cut rates to such an extent that the private company was in danger of losing all of its customers. But when the private company, in self-defense, sought authority from the Tennessee commission to make a corresponding rate reduction, that same commission, which had no jurisdiction over the activities of the municipal plant, refused to permit the private company to cut its rates. The private company was obliged to stay there and take its punishment until the inevitable collapse—and sale to the municipality.

The Tennessee commission presided over this liquidation in a subsequent decision approving the sale, in which it uttered some pious words of extreme unction, calling attention to the fact that as part of the deal it was withdrawing its certification of information which had been made the basis of criminal proceedings charging the company with "discriminatory practices." The "discriminatory practices" apparently grew out of its attempt to cut rates to its local customers as a matter of self-preservation. It is small wonder that private enterprise in the electric industry in such an atmosphere has virtually disappeared from the state.

The commission now has chiefly to concern itself about the telephone and gas industries which survive, for the present, in the form of private enterprise.

Equality of utility regulations is necessary for the very reason that the Federal government, through the Federal Power Commission, has undertaken to compare the relative performance of both types of management. Comparative rate statistics published by the FPC have had the effect of emphasizing cheap rates furnished by municipal power plants, which may or may not be based on freedom from regulatory restriction. But as long as the comparison is made, and indeed as long as the competition exists, fairness of public policy ought to insist that both performers abide by the same rules of the game.

ADMITTEDLY, submission to regulations, similar to those imposed on private utilities, would not necessarily increase such municipal plant rates. It might even reduce them. It would have the effect of X-raying and spotlighting the reasons for municipal rate structures and the soundness of the economic foundations supporting them. Where such foundations rest upon tax subsidy it would be disclosed. Any resulting rate differential with private managements of similar size operations could be discounted.

Public ownership, including not only municipal plants but other public power agencies and quasi public power agencies such as REA co-ops, should welcome this opportunity to demonstrate the fairness and soundness of its operations and even its superiority where such is claimed, as gauged by the same regulatory standards.. Refusal or resistance to such equal regulation, on the other hand, implies that there is something that the public ownership advocates want to keep hidden. Even if it isn't true, the implication is still there.

How should the equality of regulation be applied? First of all these public agencies, municipals, public districts, co-ops, and even state agencies should be subjected to exactly the same form and extent of public service commission regulation in the various states as the privately owned and operated utilities. This goes to accounting regulation, rate regulation, and even security regulation. Certificates of convenience to begin service and petitions to alter, change, or abandon service should be subject to the approval of the regulatory tribunal.

THIS reform seems simple enough when stated briefly. But the changes that would result might be regarded in some quarters as quite revolutionary. For example, municipal plants buying power from TVA now have their rates fixed by TVA through the instrumentality of the contract governing purchase and supply. This is an indirect usurpation of a state regulation, which has, it is true, been largely abdicated by state legislatures under the lure of Federal largess. These rates should be fixed by the state commissions and the state commissions only. TVA might appear and give expert advice on what the retail rates should be, and the state commissions might well follow that advice, but the TVA as an arm of the Federal government has no business telling a municipality of the state of Tennessee, for example, how much or how little it should charge customers of its own municipal plant. The money of the Federal taxpayers generally should not be used as bait to tempt individual

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states to barter away their sovereign rights.

Again, such rate regulation of municipal agencies might result in the evolution of further regulatory principles designed to put municipal plants and private utilities on an equally fair footing. In New York state, for example, the public service commission did not think that municipal taxpayers, as the real investors in a municipal plant, are entitled to a profit, or return, on their money—just as the investors in a private utility are entitled to a return. In a decision upheld by the court of appeals of the great Empire state, the commission was reversed. The municipal plant was not required to siphon off this rightful earning of the local taxpayers in the form of rate reductions benefiting rate-paying customers.

HERE is an example of the necessity for such regulation. In the absence of such exercise of jurisdiction by a state commission, what authority is there to protect the taxpayers from systematic pilfering of their rightful earnings by ambitious plant management more anxious to make a more conspicuous operating record (in the form of rate reductions) than pay back to the municipal investors a return which is rightfully theirs? It is probably safe to say that in a majority of states (where control such as exercised by the New York Public Service Commission does not exist) there is no such protection and the municipal taxpayers, whether they know it or not, are being paid as Paul, the ratepayer, without realizing that they have been tapped as Peter, the taxpayer.

Indeed, municipal taxpayers are entitled to all advantages which a municipal plant obtains from the use of the municipal tax credit. After all, it is not the managers of a municipal plant who have a dollar invested. They are using other people's money, and ought to pay a reasonable return on all the advantage taken of it. Thus, in the absence of the removal of the present unfair tax exemption of such publicly owned operations, it might be well argued that the plant *ought* to pay, over and above a reasonable return to the city treasury, amounts calculated to offset the taxes which the city would obtain if a privately owned utility were operating and paying such taxes. After all, it is only in this way that the city could be "made whole," as the lawyers say, in undertaking to allow its own tax-exempt agency to substitute for a tax-paying privately owned and operated enterprise.

FURTHER than that, the taxpayers—and we can include here not only taxpayers of municipally operated and owned plants, as well as districts, states, and other public subdivisions, but also the Federal taxpayers with respect to the use made of Federal tax credit—should be entitled to an extra margin of return equal to the amount of financial advantage gained from the use of that credit. Let us say a public agency can raise money at 2½ per cent for such public utility enterprises, whereas a private utility under the most solvent circumstances might have to pay 4 per cent. Some of the difference is represented in the tax-exempt nature of the government security—an exemption which, as said before, it seems to be generally admitted ought to be done away with.

Rules, Regulations, and Supervision

"WHY should the publicly owned and operated competitors or rivals of the private utility industry be let off scot free from rules, regulations, and supervision—admittedly burdensome at times—which private enterprise has accepted generally without question for many years? This disparity of treatment in some cases has even resulted in absurd situations, which ought to shock anyone's sense of justice."

But there is admittedly a further financial advantage in using government tax credit as a basis for raising money which private operations could not hope to match.

Who provides that advantage? The taxpayers provide it. Therefore, the taxpayers ought to get the benefit. Such benefit ought to be in terms of the difference of 1½ per cent or whatever it may be. Nobody expects publicly owned enterprises to forego certain advantages which are inherent in public enterprise, as such: cheaper money rates, economical coördination with other governmental services, free publicity, and prestige of public operations. These are happy accidents which the taxpayers provide for public ownership operations in the utility business, simply because they are a marginal socialistic enterprise, functioning within the framework of a predominantly capitalistic economy.

PUBLIC management would be foolish if it did not exploit these advantages to the limit. But consider this: If tax credit were extended to underwrite government operations in *all* forms of business, representing the 100 per cent disappearance of private enterprise, these accidental advantages would vanish immediately. A government which assumes the risk of all business would simply succeed to the average calculated risk of such individual business enterprises added together.

That being the case, the municipal taxpayers in their sphere, and the Federal taxpayers in their sphere, are entitled to a return representing the cheap money rate differential derived from the use of public credit. In addition, incidental advantages of public operation previously mentioned—such as the use of city hall or other governmental premises for the municipal utility, the use of city attorneys, engineers, automobiles, or other equipment — might well be offset by a system of credits and charges under rules laid down by public service commissions primarily designed to see that a public plant pays

for what it gets and gets what it pays for.

Perhaps after all these adjustments have been made, some of the outstanding differentials noted in the rates charged by public plants, as compared with privately owned utility plants, would prove to be not so remarkable.

HERE, as in the case of the argument of exempting public ownership from taxation, the advocates of continuing the present unfair system of exempting public plants from regulation have never made a very convincing case. They have simply gotten their way by default and nobody has done anything about it. There have been loose suggestions that the taxpayers and ratepayers are, roughly, one and the same and that to superimpose regulation would be adding needless red tape. But this view is not only obviously unsound; it smacks just a little of the futile argument which privately owned utilities put up a couple of decades ago against installing public utility regulation generally. Critics then said such arguments might well be covering up irregularities, and subsequent developments proved that such, indeed, was the case in some instances. Likewise, to continue with our present unfair system of letting public plants answer to no one but themselves is inviting an epidemic of municipal irregularity which might one day make the Boss Tweed operations look like Sunday school delinquencies in comparison.

And while we are about it, we might look into the "double standard" of regulation whereby the Federal government lays down one set of rules for private enterprise and another for public enterprise. If absentee management, through holding company control, is so bad for private industry that the Securities and Exchange Commission must break it up, what about "absentee" management by the biggest power trust on earth today—the public power monopoly under Secretary of Interior Ickes? Does the Federal government really want to break up the octopus or merely move its address from Wall Street to Pennsylvania avenue? What about acquisitions of utility property by public agencies at prices in excess of "original cost" when first devoted to public service?

III. *Freedom from Unfair Competition*

As early as 1903, President Theodore Roosevelt vetoed a bill which would have permitted private corporations to develop hydroelectric power on the Tennessee river at Muscle Shoals. In doing so, he recognized the principle that some natural resources are so stupendously important and complicated they cannot be safely exploited by private enterprise. He recognized that a private company operating for profit cannot be trusted, nor reasonably be expected to develop the full potential of public interest lying dormant in these multifaceted public heritages, interwoven as they are with such strictly governmental functions as navigation improvement, flood control, reclamation of arid lands, and so forth.

This farsighted policy, which coalesced into the "conservation movement," attracted a number of progressives, including Gifford Pinchot, the late Senators Norris, Walsh, and senior LaFollette, the present Secretary

of Interior Harold Ickes, and a host of others who rallied around the Bull Moose as the result of the Ballinger incident. It also attracted considerable opposition, selfish and otherwise.

Yet, with the exception of the mischievous Raker Act of 1913, which has hamstrung and badgered the city of San Francisco since its enactment, Federal legislation, generally, did not unfairly discriminate between private and public enterprise *once the initial safeguard of public development of such natural resources was established.*

THE Reclamation Bureau of the Department of Interior, beginning in 1908 with the Strawberry valley project, developed and sold hydroelectric power strictly as a by-product, right down to and including the completion of the Boulder dam project which first generated power in September, 1936. Under this setup, the Reclamation Bureau reserved a priority for its incidental power only for serving the purposes of the project developing the power, such as irrigation, drainage, pumping, and so forth. After that, surplus power was sold to public or private agencies at the best terms the bureau could make in the interest of the Federal taxpayer.

The Tennessee Valley Authority Act marked the first step in the direction of systematic discrimination by the Federal government against private enterprise. The TVA was authorized to develop the Tennessee river in all its necessary phases, including the generation of electric power. Further, it was ordered to give municipalities and other public agencies, including nonprofit coöperatives, a preference or priority in the sale of such power. TVA was further directed not to sell its supply to private companies, except on relatively short-term contracts (revocable on five years' notice), which would provide for the retail rates to be charged by such companies to ultimate consumers. Such contracts are revocable whenever the authority feels that the power thus supplied to private companies is needed for the requirements of public agencies.

IT is not surprising that until the abnormal circumstances of the war required TVA to pool its power with private companies in that section TVA sold only a minor amount of its power output to private companies and that only in the form of off-peak or dump power which could not be profitably sold otherwise. While the mere preference of public agencies over private corporations is debatable enough (for reasons to be examined presently) in a

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¶ *". . . private industry can welcome the challenge of competition with public ownership on a fairly competitive basis. The trouble is that by its very nature it would seem that public ownership is unable to compete on a fair basis. If that generalization is unsound, then there should be no objection against placing both public and private enterprise on a basis of 'equal justice under the law' from the standpoint of regulation."*

country which is primarily supported by a capitalistic economy, still it would not be so bad if it went no further than that. All other things being equal, private corporations could probably do a reasonable amount of business with these Federal projects if they were simply allowed to buy wholesale power supply, in the absence of a public rival ready, willing, and able at the time to make a bid for the same supply.

But the enemies of private enterprise in the public utility business could not rest with even such a one-sided arrangement. They went further in the Bonneville Act with the so-called "dog-in-the-manger" clause. This remarkable provision authorized and directed the Bonneville Administrator, not only to give preference to public agencies and nonprofit coöperatives in the sale of power generated at his project, but even to reserve half of it exclusively for that type of distribution, even though no public agency were on the spot ready to do business—even though public agencies desiring the supply or qualified to handle it were not even in existence.

THE original dog-in-the-manger provision would have terminated January 1, 1941, but was later amended to extend another year. Then the war emergency arose which claimed approximately 80 per cent of Bonneville-Grand Coulee power for direct war production through private companies. In the postwar period, however, there is little doubt that attempts will be made to extend this dog-in-the-manger provision if it is necessary to insure the extinction of private enterprise in the electric power business in the Pacific Northwest. There is little doubt in the minds of realistic observers that that is the purpose it was designed to fulfill in the first place, no matter how it might be rationalized.

The dog-in-the-manger provision of the Bonneville Act has come to be regarded by Interior Department spokesmen as "accepted" Federal power policy. Indeed, such statutory discrimination has become so commonplace that even in such a statute as the recently enacted Surplus Property Act, which recited in its policy provisions that it was designed to encourage private enterprise, we find similar preferences. As finally enacted, the Surplus Property Act provides that whenever an electric power transmission line of the Federal government is determined to be surplus property, it can be reserved indefinitely by a public agency through the mere certification that it is "adaptable" to the needs of some public power operation or coöperative project. Where this "reserved" ticket has been tied on the power line, it cannot be otherwise sold (other than to a public agency) except by act of Congress.

AS approved by the Senate, but later modified by the House, public agencies, including REA co-ops, would even have been allowed 50 per cent discount in addition to definite preference on the purchase of all surplus property no longer needed by the armed services after the war. Even in its final form, the Surplus Property Act contains a clause directing the Surplus Property Administrator to give "states, political subdivisions, and instrumentalities. . . an opportunity to fulfill in the public interest their legitimate needs." If this isn't an outright preference in favor

Organized Labor

"ORGANIZED labor and, for that matter, unorganized labor—as well as private utility management—have a very definite stake in the solution of the delicate problem posed by the advent of government agencies in the public utility business. Here again, in this sphere as in other spheres of governmental regulation, the private utility industry faces the same old line of outright statutory discrimination in favor of its publicly owned and operated counterpart."

of public agencies against prospective private purchasers of surplus government war goods, it could become so in the hands of an administrative agency hostile to a survival of private enterprise in the public utility business.

Incidentally, this discrimination with respect to the sale of surplus war goods and property can adversely affect not only the private electric utility industry but other private utility industries. The telephone companies, gas companies, transportation companies, waterworks, or water companies desiring to purchase pipe, wire, switchboards, poles, trucks, jeeps, and other miscellaneous tools and equipment which will appear in the surplus goods inventory of the armed forces will have to take a back seat whenever a public agency or coöperative makes a bid.

Few would begrudge such a preference for public agencies with respect to strictly governmental operations or charitable or educational operations. Preferences in the sale of medical supplies, maps, or textbooks, or any other surplus equipment which could be used by state or local governments for police, fire protection, health services, and so forth are not difficult to justify. But where such preferences are allowed for publicly operated business enterprise competing with or rivaling similar commercial operations by private enterprise, it is hard to see just what in the world the government policy makers are driving at, unless it is, precisely, the extinction of private enterprise in a particular field of operation.

AFTER all, the United States of America was founded and developed to its present great status as a predominantly capitalistic system. Its government is supported almost entirely by tax payments from private business or people who work for private business. Why then should our government indulge in systematic sabotage of a particular line of private business which is admittedly neither reprehensible nor criminal in form?

Why should the tax-eaters, the tax exempt, always sit down at first table—always get the preference—while tax-paying private enterprise must take the leavings?

As *The New York Times* editorially stated with respect to public agency preferences in the Surplus Property Act:

> Such a development would lead to the very evils presumed to be avoided by the restrictions placed on competitive operations by the Federal government. Instead of giving local communities a preferred position in the acquisition of surplus war property, they should, if anything, be placed in a really favored position, particularly in connection with plant and equipment which can be used to compete with private industry.

In any other form of activity, except a capitalistic government violently flirting with state socialism, such a policy favoring customers who need a subsidy over customers who are self-supporting and profitable would be rightly accounted as economic lunacy. Every businessman from the corner grocer to the largest operator, if he gives a preference at all, in his service, extends it to the *profitable* customer, never to the irregular mendicant or insolvent, who has to be carried on the books or eventually written off, in whole or in part, as a commercial liability.

SUMMING up this "third freedom" for the private utility industries, it would be fair to say that these industries do not deny, at this late date, the right of municipalities, states, and the Federal government (in certain spheres of activity) to engage in utility operations which rival their own. They *do* deny and protest the right of any government body to cripple private enterprise in the competitive race, by one-sided rules and privileges in favor of the tax exempt and the tax subsidized and against tax-paying private enterprise.

In other words, private industry can welcome the challenge of competition with public ownership on a fairly competitive basis. The trouble is that by its very nature it would seem that public ownership is unable to compete on a fair basis. If that generalization is unsound, then there should be no objection against placing both public and private enterprise on a basis of "equal justice under the law" from the standpoint of regulation.

IV. *Freedom from Unfair Labor Practices*

ORGANIZED labor and, for that matter, unorganized labor—as well as private utility management—have a very definite stake in the solution of the delicate problem posed by the advent of government agencies in the public utility business. Here again, in this sphere as in other spheres of governmental regulation, the private utility industry faces the same old line of outright statutory discrimination in favor of its publicly owned and operated counterpart. In short, privately owned utilities of all kinds—gas, electric, telephone, and transportation—are sub-

ject to the full force and effect of both the National Labor Relations Act and the Smith-Connally Act. States, municipalities, and other political subdivisions are not subject to these statutory restrictions. Specifically, they are exempt from such restrictions.

On December 14, 1943, the War Labor Board ruled that it had no authority over labor union disputes involving three municipal utilities: garbage collectors in Newark, New Jersey; subway employees in New York city; and utility workers in Omaha, Nebraska. Inasmuch as the last-named case involved a utility district, organized independently of the municipal corporation, the WLB ruling probably extends to all such independent public organizations set up for utility operations, as well as direct city or state control.

The reasons why employees cannot exercise the same liberty of collective action—notably the right to strike—as employees of a private corporation were recognized many years ago in the case of the celebrated Boston police strike which was broken by Calvin Coolidge.

More recently President Franklin Roosevelt declared that there can be no question of striking against a government agency. Commenting on this statement, *The Washington* (D. C.) *Post* editorially observed:

> There can be no genuine collective bargaining between governments and their employees, he [President Roosevelt] has said in effect, because those employees have no right to strike. Their relationship to their employer is governed by law, and law cannot be changed at the behest of public servants threatening to hold up the processes of government until their demands are met. Of course, organized public employees may petition officials for the elimination of grievances, for higher wages, or for better working conditions. If their pleas go unheeded, the employees may resign or appeal to the public to elect more sympathetic officials at the next election. But no right to strike on their part can be recognized without jeopardizing the legal basis on which government rests.

Furthermore, even if the War Labor Board did entertain jurisdiction over a municipal utility wage dispute, how would the President enforce WLB decrees for seizing and operating the property of a recalcitrant management, as provided by law in such cases? If New York city refused, for example, to obey WLB, could we imagine President Roosevelt sending troops into the city to capture city hall and turn Mayor LaGuardia out on the sidewalk, confiscating the city's taxes and other revenues, installing government officials for the performance of the usual func-

¶ "We *are told that subway workers in New York city have no right to strike against their government employer. But employees of private utilities in Michigan are given the right to strike and have exercised it. The same thing has happened elsewhere. What kind of a situation is this? Why should the city of New York be given greater protection from the inconvenience of public service interruption than the city of Flint, Michigan? Why should the mere organization of utility management give one group of citizens protection from strikes and deny it to another group?*"

tions of locally elected officials such as the district attorney?

The very mention of such an absurd possibility indicates the impracticability of enforcing ordinary labor regulation on governmental agencies, *as such*. But when governmental agencies begin to mix up the traditional governmental functions with proprietary functions, the distinction is not so clear. It *was* necessary, after all, for the Army to take over the Los Angeles public power plant in order to settle a labor dispute last spring. That brings up the unfair aspect of regulating private utility labor relations, while exempting publicly owned utility labor relations.

WE are told that subway workers in New York city have no right to strike against their government employer. But employees of private utilities in Michigan are given the right to strike and have exercised it. The same thing has happened elsewhere. What kind of a situation is this? Why should the city of New York be given greater protection from the inconvenience of public service interruption than the city of Flint, Michigan? Why should the mere organization of utility management give one group of citizens protection from strikes and deny it to another group?

To correct this inequity it is necessary to follow one of two courses: (1) Either the right to strike should be suspended for all utility employees (with the necessary corollary of compulsory arbitration, or some other safeguard for the workers), or (2) it should be extended to all public utility employees, regardless of where they work or for whom they work. If the latter course is followed, it is necessary to revive the old distinction between "governmental" and "proprietary" functions of a city or other public agency.

The Smith-Connally law itself possesses another danger for organized labor through the very use of "government operation" as a device to break up strikes. Look at what happened in the case of the Toledo, Peoria & Western Railroad Company, which was taken over by the government because it refused to comply with labor protection regulations commonly known as "featherbed rules." After the government took over, the Office of Defense Transportation suspended the so-called "featherbed rules" and the workers must go on working and may not strike against their government.

THE same thing could happen in other industries, especially under an administration less sympathetic to organized labor than the one now in power. Granted that the coal miners, for example, who worked for so many months under Secretary of Interior Ickes, had no fear of exploitation. What guaranty did they have that it would continue to be so indefinitely? There is food for thought here on the part of conscientious labor leaders who need only to turn to recent pages of history, notably in Nazi Germany, to realize that in the long run labor is on safer bargaining ground with private enterprise than with a dominating government agency. The right to strike does not exist in the Reich where the labor movement has been shackled to the chariot of government control. It does not exist in that great land of the proletariat, Soviet Russia. But it still exists in Capitalistic America—the land of free enterprise—but it exists

only with respect to *private* industry. Food for thought, indeed, Mr. Labor Union Leader.

SUMMING up this case for the four freedoms for public utility enterprise, it is not unfair to state that we are approaching, if indeed we have not reached, a point in our national history where we will have to face this issue: *Do we want to liquidate private enterprise in the public utility business?* The question is of sufficient importance, not only to warrant consideration by the people or their elected representatives, but a consideration of all the implications of the question on its own merits.

We must have an end to this sneaking up and sliding up to the same objective by people who disclaim any intention of liquidating private enterprise, who talk glibly about "public interest" or "conservation" of natural resources, or "low rates," or "protection of the investor," or most anything else but what is actually involved—the destruction of private enterprise in a great industry. Let us at least have an end to the subterfuge, to the systematically one-sided legislation, to the "yardstick" of yesterday' which becomes the public monopoly of today.

CONSIDERATION of the question must also include where, if any place, a line should be drawn between industries which shall remain private and protected, as such, and those which shall be thrown open to honest and outright socialism. For it is obvious that if the electric power industry is to be liquidated, as a private industry, the tendency will be to go further into other public utilities, gas, transportation, and communications where similar arguments about "natural resources" and "essential public service" prevail.

Yes, many compliments have been given to the public utility industries for the fine war job they have done, and to private enterprise in America generally. But it will take more than compliments to keep this system going in the years ahead. The blunt truth of the matter is: If free private enterprise is to flourish in the postwar world, it will have to be assured of an atmosphere in which it *can* flourish. Despite its inherent vigor and record of past accomplishment, free private enterprise cannot thrive on stony soil or without nourishment and proper care. Every time the Federal or local government takes steps which discriminate in favor of tax-eating government enterprise, it puts another burden on tax-paying private enterprise. Given a sufficient accumulation of such burdens, the balance of our national economy can be finally swung towards socialism, no matter how loudly the hymns of praise may be sung in favor of good old free private enterprise. As a tired old actor once remarked: "I have tried so often to live on bouquets and mash notes that I have finally lost all appetite for them."

¶ "YOU *can't plump for new Federal expenditures on the ground that a big war surplus lessens the danger of the big public debt and then turn around and close much of the surplus out gratis or at cut rates.*"
—EDITORIAL STATEMENT,
The (Baltimore, Md.) *Sun.*

Public Relations—Today's Opportunities for Utilities

They have done an outstanding job for the public, declares the author, have done their part in sharing the wealth, and the time has come to share the facts with the public—Notable examples of the good results of proper publicity.

By E. CLEVELAND GIDDINGS

ASSISTANT TO THE PRESIDENT, CAPITAL TRANSIT COMPANY

"PUBLIC Relations." What does it suggest to you? Quickly define it to yourself and then see if your understanding of the phrase nearly matches my description of its meaning to me. I won't be surprised if we are far apart because recently fifteen prominent public relations practitioners were asked to define public relations. They gave fifteen different answers. The American Public Relations Association, a newly organized group of experts in this field, has been three months trying to define the term, in order to formulate a code of ethics and a standard for membership. It will probably be some time before the definition is settled to their satisfaction.

To me public relations is perhaps easily defined by reversing the phrase and saying "relations with the public." It is an operating philosophy. The active practice of the golden rule. It is a way of life, having a definite objective. It is continuous. It will, at times, be a bitter pill for the practicing principals to swallow. It is the consideration of the public interest while maintaining in the operations of your business a proper balance for the investor and the employee.

There are two kinds of public relations—good and bad. The practices of some of the utility groups in the not too distant past have resulted in bad public relations. This has reflected on other utility groups and individual companies who have done nothing to warrant poor public relations—and also nothing to warrant good public relations.

To have good public relations, you must face facts sincerely and accept the truth bravely. You are held responsible by public opinion for the success or failure of your program. Thus, you cannot approach or continue a program in a shoddy manner. It must be

well thought out. It must be a business-like execution of a project conceived and agreed upon in advance.

The two basic fundamentals of any program are perspective and objective. Perspective reduces immediately a good many concepts of the job. An individual saturated with the problems of the utilities very often loses the other fellow's viewpoint. The objective fundamental means the acceptance of the forces which are distasteful to you, but which must be recognized.

Now let's get back to what you may consider public relations. Is it publicity? Does it mean how often you can get the name of your company into the public press or, negatively, to keep your name out of the press?

There are a great many utility men who are of the opinion that once you have won the confidence and gotten on the right side of the press, your public relations program is solved. Don't be disillusioned. It must be a continuing and deserved confidence. Newspaper people soon wise up to the peddler of bunk. You must warrant by action and deed the plaudits of the press. And only then will you have taken a small step.

Is your definition of public relations advertising? Is it public appearances before business and civic groups? Is it the printing and distribution of booklets and pamphlets? Is it a radio feature? Is it a home economics class? If it is, you are thinking merely of some of the *tools* of public relations — the tools employed to carry out a comprehensive program. These tools can do a good job, or bad job, or an indifferent job. But is must always be kept in mind that they are merely tools, whose application is, of itself, no assurance of results.

The interests of your business are common with the interests of the public because the public are your customers. Thus, you have standing beside you the greatest force in the country—the public—whose opinion is wooed by political bureaucrats. The same opinion causes public utility executives to run to the confines of their office, where they figuratively bury their heads in the sand. When they emerge, they have literal headaches. Too few recognize that their interests are concerned at all times with the people and with their economic and cultural development. They cannot escape it.

It is a simple thing to conclude that if your operations are good, you have good public relations. That is exactly what a great many utility people have done. But there must be public consciousness of the fact—a public appreciation of a good job, well done, and in the public interest. In the past few years, utilities have accomplished wonders. They have assumed a burden that has made possible the production miracles that are winning this war for us.

The utilities have met the demands of war without recourse to rationing the individual. They have reduced the costs of their product even in the face of rising wartime costs. In the least instance they have maintained the cost at a stabilized level. You know these things, and I know these things, but does the public know? Certainly not all they should know. And you cannot afford to sit back like Father Divine and cry "Peace! It is wonderful." The

doing, in itself, is not enough—not enough for good public relations. If, as the theologians say, good works without faith are not enough for salvation, so in a more worldly sense, good works without publicity are not enough for success in maintaining public confidence and good will. You must tell the public not only of the good job you are doing, but you also must make clear how you do it. You must impress them with the "know how" you possess. What appears elementary to you is most often the thing about which the public has a misconception.

Right now utilities are held in higher esteem by the public than they were before the war. But they are far from the 10-yard line of good public relations where they deserve to be on the basis of accomplishments and contributions to the welfare and prosperity of our country.

Let's get down to brass tacks.

There is one sure way to discover what the public thinks of you. *That way is determined through utilization of qualified public opinion surveys.* Other industries and organizations have been awake to these milestones of directional progress for some years. I dare say few utility companies have explored the possibilities of knowing what your own customers—the public—are thinking about the way you conduct your business.

PRIOR to the war, a public opinion survey was made of the electric power business.

The results clearly showed the concepts of the public were mostly wrong. There was a lack of public good will toward the electric utility business. Is there any wonder politicians were on its neck? They knew public opinion was on their side and in their favor. Did the companies know where the deficiency for these wrong concepts was traced?

The plain fact is that the public was less informed, and more misinformed, about the electric power business than it was about others. Unfortunately, the first survey also showed that a large segment of the thinking public—editors, educators, and other influential citizens — were seemingly less friendly than the general public.

Public opinion surveys are eye openers. One transit company, after an experimental pilot survey taken recently, discovered that its passengers thought its operators were among the most discourteous group of its kind in the country. This was surprising. Conversely, their passengers thought their vehicles were clean and well maintained, while the company was under the impression that they were dirty, because of the lack of man power.

Assuming that an average utility's operations are good—and they are

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good—by that I mean that rates are generally fair, equipment and property maintained efficiently — where, then, does it stand in your public relations? Do telephone operators answer the phone pleasantly? Do your field men talk pleasantly to your customers and clean up after they finish a job? Does the cashier have a smile for the customer when a bill is paid? Do streetcar and bus operators treat their passengers as fellow humans, or do they consider them so many cattle to be bounced around and barked at?

Is the plant well cared for? Is the grass cut regularly in the summer? Is the snow shoveled off the sidewalk in the winter? Are complaints taken seriously and the customer given a complete explanation? Is the office housed in an antiquated building at the far end of town? Or does the company conduct its business in a modern structure in the business district, indicating a progressive organization moving along with, and perhaps ahead of, the community?

If these things are so, the company is taking advantage of some of the available public relations opportunities.

A utility organization is the *alter ego* of the persons with whom the public identifies it.

The public relations department, as such, is the responsibility of every employee of the company. It is not one man or a small group. They may be the spark plugs that suggest some of the techniques of its practices. They may be the thorn in the side of top management. But the public relations department is really everyone on the payroll. They are in the picture from beginning to end. To function they must have an understanding of your problems. They must be kept informed.

One of the best ways of accomplishing this is through an employees' magazine, supplemented by informative booklets, bulletins, meetings, and other means of transmitting internal information. Utilities might well consider spending a little money on dinners for key groups, so that they might be better informed about utility policies and problems. And, incidentally, this gives the employees an opportunity for meeting the boss face to face and realizing that he, too, is made of flesh and blood.

Keeping employees informed in a way which they will regard as pleasurable as well as educational, and not a "homework" chore, is important. In this way their off-duty contacts will reflect an intelligent knowledge of their jobs and their company. Of course, there are many things they will not be able to answer, if they are asked questions. Let them bring these questions back to those who are more fully informed.

What else can be done? Certain other tools are rusty from disuse. For the past several years, some utilities have been afraid to handle them with full force. There again, it may entail taking the rubber bands off the corporate bankrolls. But if gross revenue is not spent to tell the story to the public, it may well be taken from the company in another manner. The fact that a large segment of the public thinks profits of utility companies are too high is an invitation in that direction.

If this discussion appears loaded on the lecture side, don't overlook the fact that there are bright spots. Compari-

Who Constitute the Public Relations Department

"THE public relations department, as such, is the responsibility of every employee of the company. It is not one man or a small group. They may be the spark plugs that suggest some of the techniques of its practices. They may be the thorn in the side of top management. But the public relations department is really everyone on the payroll. They are in the picture from beginning to end. To function they must have an understanding of your problems. They must be kept informed."

sons are odious, but it is no secret that two utility industries have done wonders in this field. One is the Bell Telephone system. The other, the American railroads. It was not always so.

THE telephone industry embarked on a public relations program twenty-five years ago. This came after the telephone business got such a scare in the form of a public ownership threat coincident with World War I that it never forgot it. The Bell people have the confidence of the public today, and it is held in high esteem. They have not been afraid to use the tools on hand and have discovered and developed a few of their own. They saw back in the early days of World War I the struggle that lay ahead and they profited by their mistakes. They progressed—stepped out public relations wise—and took a positive attitude. They are firm believers in telling the public of the good service they are rendering.

They have developed their techniques to such a fine state of perfection that they maintain a press contact which regularly provides to subsidiary companies new stories, features, photos, and so forth about the industry. It is significant that they have become to be regarded as in a class by themselves in the utility business.

The other exception, the steam railroads, have done an outstanding job, in the last few years. It is perhaps a coincidence that it too, as an industry, received a bad scare during World War I in the form of a public ownership threat which closed the ranks of the railroad industry against the divide-and-conquer technique that has certain other industries today disunited and discouraged. Spearheaded

by the Association of American Railroads, they have changed public opinion very noticeably by keeping the public fully informed of the job being done. These efforts are supplemented by a coördinated program of individual railroads.

THE railroads first undertook their plan in 1937. Prestige of the railroads was at a low ebb in the public's mind. The morale of their employees was not too high. Business was hard to get. Regulatory authorities were exercising prerogatives they never enjoyed before. Things were going from bad to worse. They looked about for help.

One day a bright counselor said, "It is high time for the railroads to put aside the patched coat, the whining voice, and the tin cup, and set about registering the kind of impression which will evoke admiration and win friends." They took his advice. Railroad executives were injected with the needed enthusiasm and set about telling the why and how of their story to the public. They have taken several years to reach only part of their goal. They know their program must be continuous. They are spreading the gospel of enterprise and the understanding of what influences people to the personnel of every railroad and to their security holders. The latter group until recently received annual reports that were statistically dry to everyone except a financial analyst or an accountant. Now annual reports are being issued that make worth-while reading and inspire the nonstatistical-minded security holder. The railroads have spread the new concept to the key men in the publication field, to reporters, and to the public. They are successfully selling the public on the fact that the railroads are the most progressive, serviceable, and admirable transportation system in the world today—an enterprising and essential part of American life.

THE railroads, like the telephone system, believe in talking, writing, and visually displaying their accomplishments. They reach into every public place, every branch of the government, and into every home. Looking forward to tomorrow, they are carrying their story into the schools and taking full credit for doing it. They are not afraid of political criticism for this, and as a matter of fact have received relatively little on this score.

How long are electric, gas, and transit utility groups going to wear their cloak of overwhelming modesty? How long is it going to take these utilities to discover that they owe it to their own public, both ratepayers and investors, to fully inform them of the importance of their businesses to the American way of life.

THE public has a heavy stake in the utilities. You may have noted I referred from time to time to investor-owned utilities. It more rightly should be public-owned utilities.

I avoided the words "privately owned," because they are a vague invitation to popular error. The term "private ownership" designates nonpolitical economic interest and nongovernment management, but to millions of uninformed and misinformed Americans it means a sinister individual wearing a checked vest bulging with big bills or a clique selfishness by

which many are deprived to gratify the greed of a few.

The public are truly the ones who own our power and gas plants, our water companies, and transit properties. The great majority of the established, earning, and progressive citizens of this country have a vital stake in the utilities. They are owned by Main Street, not Wall Street.

THE investment portfolios of insurance companies, hospitals, banks, and other public agencies are secured by holdings of utility stocks or bonds —the very backbone of their investments.

The very preferred position of utility securities in the investment portfolios of insurance companies and endowed institutions suggests the high record of competent management and financial reliability. Few people appreciate the significance of the utilities to their own interests.

WE in the utility field have done our share in sharing the wealth. More will be done. We have given our fellow citizens a bigger and better dollar's worth of service, decade by decade. Now the time has come to share the facts and to make familiar to those same fellow citizens the why and how concerning the accomplishments and the ingenuity of the utilities, the pioneers of organization, improvements, and economies of production.

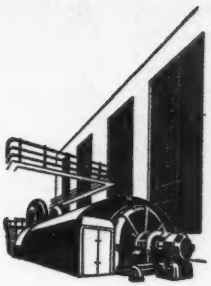
It is high time for us, too, to put aside the patched coat, the whining voice, and the tin cup. Let us take advantage of our opportunity. Let us vigorously and positively set about registering the kind of impression that will evoke admiration and win friends.

Pennsylvania Public Utility Potpourri

"DURING *the year 1943 there were 9,739 public utilities under the jurisdiction of the Pennsylvania Public Utility Commission.*

"The utilities were: airways 4; bus, scheduled service 417; bus, group and party service 205; bridge (toll) 11; canal 2; common carriers by water 5; express 2; electric 52; ferry 16; gas 138; grain elevator 3; incline plane 3; pipe lines 6; refrigeration 1; steam heat 32; stockyards 3; sewerage 15; steam railroads 70; street railways 17; taxicabs 424; trucks 7,600; telegraph 2; telephone 232; water 476; wharfage 3."

—EDITORIAL STATEMENT,
Pennsylvania Independent Telephone Association.



Utilities in the War Zones

Service that calls for every kind of original thinking and resourcefulness—Its bearing on postwar requirements.

By A. E. PERKS

As of September 18th last, a stock of 3,705,830 pounds sterling worth of public utilities equipment had been amassed by UNRRA and was being held, in fact still is being held, at the disposal of UNRRA officials in Great Britain. That is, about $17,000,000 worth.

The fact, passed unnoticed by the daily press, was officially recorded in a report tabled at the second world gathering of UNRRA officials and representatives of the 44 United Nations which subscribe to UNRRA, a body whose purpose is fairly clearly indicated by its name, the United Nations Relief and Rehabilitation Administration.

This little item resembles most of the outstandingly important features of the UNRRA and many similar conferences. It found no place in anyone's speech. It was not mentioned in any press release. Yet it unlocks the door to a world of drama, tragedy, and sound business calculation, and a lot of things that I rather think the public utility world ought to know about.

First, public utility men have already contributed a remarkable lot to the relief of trouble and suffering in war-shattered centers of Europe. Second, they are still doing so and are sure to be called on in the future to contribute further. Third, things are going to happen in the next two years or more, arising out of this year's and next year's UNRRA meetings, which will be of very great interest to the public utility men of North America generally.

First, here is something dramatic which came out at last September's UNRRA meeting in Montreal. It referred to what happened when Naples was delivered from the yoke of the Hun.

One of the most pressing problems that the United States Army met

on entering Naples was shortage of water. The city's waterworks was still in the hands of the enemy. Experienced waterworks men (and there are plenty of them serving in the Army) set up water points, which were supplied with water from tank trucks. Distilling machinery was rigged up, to make bay water drinkable. Then the 82nd Airborne Infantry Division went after the waterworks and finally drove the Germans out. The aqueduct was a privately owned setup, and consisted of cast-iron sections bolted together. Employees of the company had succeeded in hiding a sufficient number of spare parts, plus some equipment taken from the Germans, to make it possible for American engineers, coöperating with the Italians, to get the aqueduct and the waterworks into a reasonably working condition within ten days.

Next came a power problem. It was first brought up as a health question. There is one level of sewers there, from which the sewage has to be pumped over a hump into the next level. Some of the pumps were broken. None of them would work, because there was no electricity to operate them. When sewers stagnate for any length of time, the health problem becomes very serious.

So the power utility men in the Army and Navy came into action. They, first of all, borrowed three Italian submarines, moored them in Naples harbor, and cabled their electrical generating units to converters by which the Italian Navy's DC was changed to AC; the converters were wired to the city's sewage pumps and the day was saved, for the time being anyhow.

A Diesel power plant was then repaired and used instead of the submarines, which the Navy needed for other work. Then a steam plant was put into working order. This, originally acquired by the Italians as an emergency plant for peak load use, became their principal source of power until the Germans could be driven out of the northern hydraulic power sources, and the transmission lines repaired, the latter once more a job handled by skilled public utility men, American and Italian in coöperation.

That is the sort of experience that is being duplicated every time a city or town, industrial or commercial or residential center of any kind, is wrested from enemy hands. The work, calling for every kind of original thinking and resourcefulness, is made still more interesting by continual shelling, bombing, and frequently sniping, from not very distant enemy forces. There are streetcar men and power line men, waterworks and sewage men who will come home with lines of medals on their breasts, and a wealth of unusual experience in the back of their minds.

It follows that America will not be short of first-class emergency men and trouble shooters in the public utility fields for many years to come. Floods, hurricanes, earthquakes, forest fires will disrupt utility services again but there will be an army of experts available to make temporary repairs and get things going by the shortest route, men who have learned how to do without most of the things the textbooks call for, and look upon the impossible as their daily routine.

Along the same lines, still more valuable experience lies ahead. Foreign Policy Reports, in reference to the

UNRRA program, cites as part of its specific objects, "Rehabilitation of public utilities and services, so far as they can be repaired or restored to meet immediate needs, such as light, water, sanitation, power, transport, temporary storage, communications, and assistance in procuring material equipment for rehabilitation."

A FIRST reaction to this is: What a glorious opportunity for finding out. Did your chief engineer ever wish he had a laboratory of some kind where he could try things out without the risk of wrecking his own plant, system, or setup? Here's his chance. Probably all the experiments that any utility man can think of will be tried out during the next three years in Europe. And all your plant man or operations engineer has to do is to sit back and watch how they work over there.

The second reaction is not quite so happy. A city of a million inhabitants plus was allocated eighteen new streetcars last year. And that was the first new rolling stock they had been able to acquire since 1940. A city of a million and a quarter is using 12 to 14 per cent more water daily, in summer, than its normal filtration capacity, and is hoping for the end of the war to come before its water supply goes completely haywire.

Every city in North America is looking forward to getting a slew of new utility equipment. Montreal, where UNRRA held its last meeting, wants a 300,000,000-gallon water reservoir, 200 new streetcars, and a $60,000,000 underground railway system, as soon as the war is over. But if the whole continent of Europe is also clamoring for new utility equipment, streetcars, waterworks, power machinery, transmission lines, etc., etc., and UNRRA is pledged to get it for them, the American utility operator may have to "put water in his wine," as they used to say in Paris in the days when there was wine in Paris.

So what? Your guess is as good as mine. Now you take it from here.

Man on Horseback

"THE *people have always some champion whom they set over them and nurse into greatness. . . . This and no other is the root from which a tyrant springs; when he first appears he is a protector.*

"In the early days of his power, he is full of smiles, and he salutes everyone whom he meets.

"When the tyrant has disposed of foreign enemies by conquest or treaty, and there is nothing to fear from them, then he is always stirring up some trouble or other, in order that the people may require a leader.

"Has he not also another object which is that they may be impoverished by payment of taxes, and thus compelled to devote themselves to their daily wants and therefore less likely to conspire against him?"

—PLATO,
EXCERPT *from The Republic, Book VIII.*

Wire and Wireless Communication

COMMUNICATIONS circles were stirred by the announcement of a proposed expansion of private music and entertainment system by Muzak Corporation, in which important public figures would participate. The Muzak setup, reported to involve an investment of approximately $10,000,000, was explained by Joseph L. Weiner, former director of the SEC Public Utilities Division, in his capacity as attorney for Muzak in proceedings before the FCC.

Muzak Corporation has for some years been active in providing selected music programs on a subscription basis by private telephone wire to hotels, restaurants, and other selected customers having special need for programs without the usual advertising interruptions and other announcements necessary in regular radio broadcasting.

Muzak Corporation now proposes to expand this service to include broadcasting by radio and is asking FCC for certain frequencies for that purpose. Explaining how the Muzak service could be broadcast without interfering with its subscription fee basis, Mr. Weiner briefly described the technique proposed to be followed. There would be a choice of about three programs (for example, serious music, lighter music, and entertainment or even educational material) which each subscriber could select through a switch on his receiving set. These programs would be broadcast over three different channels but "scrambled" at the point of transmission so that reception by an ordinary radio receiving set would result in an unintelligible cacophony.

PAID subscribers to Muzak Corporation service, however, would have their receiving sets with an "unscrambling" device which would rectify the signals at the point of reception without any change or variation from the original quality of transmission. Presumably, the "scrambling" and "unscrambling" device would be adjusted periodically to prevent technical "bootleggers" from catching up with the operation. The Muzak plan calls for a "subscription fee" of about 5 cents a day by the listener.

Details of the operating organization were not disclosed, but Muzak Corporation itself is headed by William B. Benton, an original partner of Benton & Bowles, advertising agency, which owes a large measure of its success to radio advertising. The other partner, Chester P. Bowles, is now administrator of OPA, but it is reported that Mr. Bowles plans to join the new project when his OPA duties permit. Also expected to join the board of the new organization will be Robert M. Hutchins, president of the University of Chicago, and Beardsley Ruml, financial expert and treasurer of R. H. Macy & Company. Mr. Benton also admitted that he had offered a position to James Lawrence Fly, chairman of the FCC, upon the latter's expected retirement from that board in the near future. Benton owns the common stock

of Muzak. The North American Company, utility concern, is said to own the preferred.

FCC General Counsel Denny, on cross-examination of Mr. Weiner, raised the question of whether the proposed 3-phase service setup would not violate the FCC's duopoly regulation. This regulation prohibits ownership, operation, or even management of more than one radio broadcasting station in the same reception area.

* * * *

THE FCC has warned all radio broadcasting licensees that § 317 of the Communications Act requires full sponsorship identity. The warning came after protests made during the election campaign that certain political spot announcements were not properly identified as to sponsorship.

"Numerous complaints have recently been received by the commission concerning failure of radio stations to identify sponsors of political spot announcements," said the FCC notice. After citing § 317 of the act, the notice pointed out that the section "applies to spot announcements, as well as to all other material broadcast and requires a full and fair disclosure of the identity of the person furnishing the consideration for such broadcast."

The commission notice followed complaints by the American Civil Liberties Union and the Liberal Party of New York state to Chairman James Lawrence Fly, charging that political broadcasts are being carried without proper sponsor identification. The Civil Liberties Union protest made reference only to "spot announcements in behalf of political candidates." An investigation by commission personnel disclosed that some stations had broadcast political spot announcements, labeling them only "political" announcements. It was pointed out that such identification is not sufficient.

Pending before the FCC is a proposed rule to require identification of not only sponsors of commercial programs, but of those providing "free" material for broadcast.

THE Michigan Public Service Commission on October 17th at Lansing opened a hearing on its order requiring the Michigan Bell Telephone Company to show cause why its rates should not be reduced.

Defending present telephone rates, George M. Welch, president of Michigan Bell, expressed regret in a statement issued as the hearing opened at any implication that it is overcharging its customers. He said:

> The public has only to compare the effect of the war on the price it is paying for telephone service and other prices to conclude that we are not profiting by the war.
>
> Since 1940, rate reductions have resulted in savings of nearly $4,350,000 a year to customers of this company, based on present usage. Today, Michigan Bell is doing 65 per cent more business than in 1939, while it is earning about $1,000,000 a year less.

* * * *

THE FCC radio spectrum allocation hearings continued through the month of October. Zellon E. Adritsh, radio engineer in charge of operations, testified for the Indiana state police on interference problems arising in the 30- to 40-megacycle band of the radio spectrum.

His testimony brought considerable cross-examination and unusually keen interest on the part of commissioners and FCC counsel, who indicated after the session that Mr. Adritsh gave more specific propagation data in the lower FM band than had been presented. Asserting that experience had taught police that FM in the 30-40-megacycle band was especially adaptable to fixed station and mobile services, Mr. Adritsh said, however, that "the propagation characteristics of these frequencies result in direct wave interference up to and in excess of 100 miles and skywave interference at distances from around 500 to several thousand miles; the extent, distance, direction, and time of the latter varying widely, we are told, over an 11-year period."

He told the commission that those sources of interference can be rendered

impotent by provision of an adequate number of channels and by their proper assignment. Direct wave interference at 30-40 megacycles can be minimized, he said, by (1) use of separate channels for fixed and mobile stations; (2) adequate geographical separation between states using the same frequency, and (3) segregation of the state channels from the county and city channels.

"It is not uncommon for fixed very high frequency FM stations to cause severe interference at distances in the neighborhood of 100 miles or more," said the Indiana state police official. He said in 1943 the Illinois state police were forced to change their mobile frequency from 39.9 megacycles to 39.5 megacycles because of "crippling interference" from WAYH of the Chicago Surface Lines, which was operating on 39.86 megacycles. He said the 40-kilocycle channel width is a "doubtful minimum" and recommended channels of 100 kilocycles.

COMMISSIONER Paul A. Walker, who presided, told police witnesses that further testimony was unnecessary because the commission was convinced of the importance of the services and needed only their advice and recommendations on the specific allocations to be made.

Inspector Francis A. Burns of the New York police department presented a report on police needs for which channels above 100 megacycles were requested and also a separate channel in the 30-40-megacycle band to provide a minimum of interference.

Captain Herbert L. Batts of the Indianapolis police department proposed a few channels in the 120- to 126-megacycle band for facsimile transmission for check on signatures or documents and for identification of persons.

The following day the commission heard witnesses on behalf of the radio needs of the fire departments, headed by Mayor F. H. La Guardia of New York city.

* * * *

TELEVISION—by means of the coaxial cable system to be constructed in the next five or six years by the Bell system—will first become available in 1946, according to present tentative plans disclosed by Frank A. Cowan, transmission engineer of the American Telephone and Telegraph Company, in a paper presented at the National Electronics Conference in Chicago recently.

The coaxial cable, the only conductor over which television images can be carried over a reasonable distance, consists of a copper sheath; in its center another copper wire is mounted on closely spaced insulators, and the whole is so shielded that "repeaters" (amplifiers) can be placed farther apart.

Mr. Cowan discussed the Bell system coaxial cable construction program, announced last spring, which will entail an investment of approximately $100,000,000. These cables, which will cover between six and seven thousand route miles, are capable of transmitting hundreds of telephone conversations simultaneously over a single pair of conductors along with television images.

Tentative plans for television transmission are: 1946, New York-Washington, New York-Boston (television radio relays also may be tried), Washington-Charlotte, and Los Angeles-Phoenix; 1947, Chicago-Toledo-Cleveland-Buffalo, Washington-Pittsburgh-Cleveland, Atlanta - Birmingham - Jackson - Dallas-El Paso-Tucson-Phoenix, and Chicago-Terre Haute-St. Louis; 1948-1950, St. Louis-Memphis-New Orleans, Kansas City-Omaha, Des Moines-Minneapolis; Atlanta-Jacksonville-Miami, and Los Angeles-San Francisco.

Mr. Cowan stated that these routes are subject to review just prior to construction. Requirements of the armed forces, general business conditions, the volume and distribution of long-distance telephone messages, the availability of cables and equipment, and other factors may modify the extent of this construction.

* * * *

TELEVISION is not going to be a poor man's entertainment any time soon after the war, the Federal Communica-

tions Commission was told recently, and the chances are that only cities of half a million or more residents will be able to support a television broadcast station.

Lewis Allen Weiss, official of the Don Lee radio chain in California and director of a "video" station in Los Angeles, said television is a luxury product very expensive to maintain, and predicted that for a long time to come it will be limited to service in metropolitan areas. He based his estimate of the 500,000 population necessary to support a station on economic factors. He said that probably only 10 per cent of the people in any such community would be in a financial position to buy a television receiver, and that a certain percentage of purchasers would find their homes situated in areas where reception would be unsatisfactory.

Mr. Weiss, whose own station has been broadcasting "video" programs for fifteen years, urged immediate postwar expansion of television in the present channels and upon the present standards set by the FCC. Though it will probably be several years before a station, even in a large market area, becomes self-sustaining, he said there are psychological reasons why such broadcasting should proceed at once. He said the public has heard much possibly fanciful detail about television, and that there is now a "peak of interest" which should be met, not lost.

With his testimony, battle lines were drawn for the most extensive fight currently facing the radio industry.

Mr. Weiss also represented a group known as Television Broadcasters' Association which opposes any drastic change in present television standards and broadcast frequencies.

EARLIER the FCC had heard from spokesmen for the Columbia Broadcasting System, which recommends shifting this type of radio service to ultra high frequencies where only experimental broadcasting has hitherto been done, and which provides room for much wider channels than those now in use.

Dr. Peter C. Goldmark, chief television engineer for CBS, presented considerable engineering testimony to support the demand for higher standards and frequencies. Pushing the broadcast frequencies far upward, he said, will offer high-definition pictures much superior to the images now transmitted. Mr. Weiss also stated that present transmission does not produce pictures that match present motion pictures for clarity and detail.

CBS is also advocating that colors be used instead of the black and white to which television broadcasting is now confined, but this again means higher standards and more exacting special equipment.

Dr. Goldmark said it would be possible to broadcast pictures and sound on the same transmitter at the high frequencies, instead of two separate transmitters, as is now the practice, and said there would be less difficulty with noise interfering in the signal.

In response to questions by Chairman James Lawrence Fly and Charles R. Denny, Jr., FCC counsel, Mr. Weiss said technical broadcasting expenses alone, exclusive of talent, ran to $150 per hour for his station. These may be larger after the war, he added, since "craft unions which have been set up in the motion picture business have already asserted their readiness to insert themselves into television."

He said there were 23 of the craft unions involved.

While there may be some advertisers who will buy television programs at once, he declared they would be drawn in because of the novelty. But sound economic support for television will have to be based upon a steady audience, and he said this may take several years.

There was some conflict in technical testimony. Dr. Goldmark maintained that there would be no appreciable difference in construction costs of television receivers if the television channels were placed far up in the spectrum. But G. R. Town, director of engineering research for the Stromberg-Carlson Company, said a shift upward in television channels would double the cost of manufacturing the receiver.

Financial News and Comment

By OWEN ELY

American & Foreign Power Company, Inc.

(Series of holding company reviews.)

AMERICAN & FOREIGN POWER COMPANY, subsidiary of Electric Bond and Share, was incorporated in 1923, acquiring properties in Cuba. In 1927, control of South American Power Company was taken over from Electric Bond and Share in exchange for 364,175 shares of second preferred stock and 1,456,700 warrants. Various other Latin American properties were acquired in the next few years, largely from British interests. This process of system building largely ended in 1930.

The parent company now has total assets carried at about $514,000,000, while the consolidated balance sheet indicates a net plant value (including franchises, etc.) of some $604,000,000, not including Chinese subsidiaries now under Japanese control. At the end of 1943 the company's capitalization was as follows:

	Amount (Millions)	*Per Cent Held by Electric Bond*
Subsidiaries		
Dollar obligations	$25	78%*
Foreign currency obligations	22	..
Preferred stocks and arrears	51	..
Minority interest	10	..
Parent Company		
5% debentures due 2030	50	..
Debt to Electric Bond & Share	30**	100
First preferred stocks ($100 a share plus arrears)	146	7
Second preferred stock ($100 a share plus arrears)	498	84
Common (2,192,368 shs.)	..	40
Option warrants (6,533,095)	..	89

* Electric Bond owns 25 per cent of $79,309,523 Cuban Electric Company debentures, but the balance of this issue is held by American & Foreign Power and a subsidiary.

** Reduced from $35,000,000 in January, 1944. The amount is due $3,000,000 each in the next four years and $18,000,000 in 1949, subject to certain conditions imposed by an SEC order.

It appears rather obvious that, including the large claims for arrears ($73.68 per share on the $7 preferred, $63.15 on the $6 preferred, and $92.75 on the second preferred), the preferred stock claims in liquidation would (if fully recognized) make the common stock and warrants worthless. Since senior obligations plus the claims of the first preferred stock total some $334,000,000, the remaining book value of assets is also insufficient to cover the claims of the second preferred stock by about $167,000,000.

However, it is possible that in any recapitalization plan formulated and/or approved by the SEC, the public holdings of system securities might be treated on a different basis than those held by Electric Bond and Share. In permitting the readjustment of the $35,000,000 debt to Electric Bond and Share, the SEC reserved the right to study the "rank or status" of the debt in connection with any future recapitalization.

AMERICAN & FOREIGN POWER COMPANY, INC.

TERRITORY SERVED BY OPERATING SUBSIDIARIES

(Property in China is in territory now under Japanese control)

	Consol. Sh. Earn.		Parent Co. Sh. Earn.		Dividends Paid		Approx. Price Range	
	1st Pfd.	2nd Pfd.	1st Pfd.	2nd Pfd.	$7 1st Pfd.	2nd Pfd.	$7 1st Pfd.	2nd Pfd.
1944 (to date)	....	....	....	....	....	....	102-68	26-16
1943	$8.64	.70	$7.45	.30	$5.07	....	88-46	26-7
1942	7.89	.45	7.02	.16	2.10	....	49-19	9-1¼
1941	6.76	.07	3.89	D.89	1.75	....	28-15	4-1
1940	6.17	D.13	3.13	D1.14	1.40	....	28-11	7-2
1939	5.39	D.39	2.72	D1.28	....	....	31-12	10-5
1938	6.83	.09	2.58	D1.32	....	....	25-13	13-5
1937	7.11	.18	4.00	D.85	....	....	69-18	39-6
1929	40.25	8.79	28.99	5.84	7.00	7.00	109-102	103-86

THE SEC has no authority to regulate the operations of the foreign operating subsidiaries of American & Foreign Power, but is studying the question of recapitalization of the holding company itself and its relations with Electric Bond and Share.

While the utilities division has doubtless given the matter considerable study, formal hearings have not yet been initiated and it appears unlikely that this will occur until the recapitalization plan has been considered by Electric Bond and/or the commission staff.

On October 26th, American & Foreign, joined by Electric Bond and Share, filed with the Securities and Exchange Commission a plan of recapitalization under which American's capital structure will consist only of debentures and common stock. Instead of the present capitalization of serial notes, debentures, preferred stock, second preferred stock, common stock, and option warrants to buy common, American will have outstanding $119,281,200 of 5 per cent debentures and 2,500,000 shares of common stock without par value.

Under the plan, security holders other than Bond and Share will own $112,912,500 of American debentures, $15,728,355 of cash, and 602,307 shares, or 24.1 per cent, of the new common stock. Bond and Share, American's largest security holder with approximately $280,000,000 invested, will have $6,368,700 of debentures, $1,592,210 in cash, and 1,897,693, or 75.9 per cent, of the new American common. It was stated that the new common stock equity will represent more than $329,000,000 of cash paid into American's treasury, of which $262,700,000, or 80 per cent, was furnished by Bond and Share.

The present 5 per cent debentures of American will remain undisturbed, and all other securities will be exchanged for new securities. The present $6 and $7 preferred stocks are to be exchanged for new debentures, cash, and new common stock in full settlement of all existing rights. The 1,311,138 shares of outstanding common stock, held by others than Bond and Share, will be exchanged for new common on the basis of one new share for each 50 shares of the outstanding common.

It was set forth that under the proposed recapitalization, latest consolidated income for the common stock would have been $3.36 a share.

Water Company Stocks

THE great majority of water services are controlled by municipalities or by the large electric-gas holding companies. Only a handful of water service company stocks — about fifteen — are traded in, and only about eight of these are regularly quoted. (See accompanying table.) A number of water company stocks enjoy investment status and are rather closely held, with resulting poor markets. This is particularly true in the New England area, as illustrated by Torrington Water. Because such a large

proportion of these stocks seldom changes hands, trading interest in them has dwindled, and only one or two firms such as Cohu & Torrey are now interested in maintaining markets in these stocks.

There are several holding companies which have made a specialty of water company holdings. American Water Works, controlling a large number of water companies in twenty-one states and Cuba (with an estimated population served of 3,134,000), is the largest of these holding companies, but only about one-fifth of the system revenues are derived from water. About 40 per cent of the water service business is controlled through Community Water Service Company, a holding company with a number of operating subsidiaries serving consumers in over 110 communities, located in eleven states. Working control of the company was acquired in 1936 by purchase of a majority of the preferred stock of Community which carries voting rights because of omission of dividends since 1932. Shortly after control was obtained an intermediate holding company, American Communities Company, was created, taking over the preferred stock held by Water Works and the common held by the Chemical Bank. The SEC order issued in 1937, which passed favorably on the major points of American Water Work's integration plan, suggested elimination of American Communities Company and recapitalization of Community Water Service Company, but no plan has been worked out as yet. Despite large arrears, the stock sells at about 4.3 times 1943 earnings.

FEDERAL WATER & GAS (formerly Federal Water Service Corporation) furnishes water to about 137 communities in nine states, and through nonconsolidated facilities to 197 communities in New York and Pennsylvania. However, so far as the consolidated income account indicates, water revenues are only about 16 per cent of the total gross. The company has been ordered to divest itself of its water interests, but this is a slow process, since some of the subsidiaries must be recapitalized. The company has been negotiating recently regarding the sale of two important subsidiaries, Ohio Water Service and West Virginia Water Service.

General Water, Gas & Electric (controlled by International Utilities Corporation) is a smaller system, but water revenues constitute about 70 per cent of its total income. Its water subsidiaries serve 24 communities in eight states.

WATER COMPANY STOCKS

	Price About	*1943 Div. Rate*	*Yield About*	*1943 Share Earn.*	*Price-earn. Ratio*
Holding Companies					
American Water Works & Elec.	9	....	....	$ .75	12.0
Federal Water & Gas	14	$ .85	6.1%	1.89	7.4
General Water, Gas & Elec.	13	....	....	1.41	9.2
Community Water Ser. pfd.	44	....	....	10.24	4.3
Northeastern Water Co.	10	....**	....	3.26	3.1
Operating Companies					
Elizabethtown Water Consol.	116	6.00	5.2	8.29	14.0
Indianapolis Water A	18	.80	4.4	.97	18.6
Jamaica Water Supply	34	2.00	5.9	2.77	12.3
Middlesex Water	46	3.00	6.5	2.33	19.8
Ohio Water Service A	44	4.50	10.2	3.58	12.3
Philadelphia Sub. Water	18	.80	4.5	2.52	7.2
Plainfield Union Water	60	4.00	6.7	4.21	14.2
Torrington Water	35	2.00*	5.7	1.64*	21.3
Hackensack Water	32	1.50	4.7	2.06	15.5

* 1942.
** Initial dividend on new stock of 25 cents a share paid May 1, 1944.

Dividends on the common stock were paid during 1935-42, but nothing was paid in 1943 despite improvement in the parent company's earnings.

Northeastern Water Company is a merger of Northeastern Water & Electric Corporation (formerly controlled by the Associated Gas system) with Delaware Valley Utilities Company and Union Water Service Company in 1943. The company serves 101 communities in ten states. J. H. Ware, Jr., chairman of the company, is understood to have a controlling interest, purchased last year.

In the operating company list, Ohio Water Service A stock has a high yield (over 10 per cent) because of the liberal payment to the holding company in 1943, which was substantially in excess of earnings. Moreover, the company has a substantial amount of industrial business which has been stimulated by the war and which might show a recession in the postwar period.

It is difficult to generalize regarding the water company stocks. So far as a trend is discernible, they have been advancing in recent months and are currently around their best levels of recent years.

Buffalo, Niagara & Eastern Power Reorganization Plans

THE Niagara Hudson Power Corporation's plan of reorganization, which was submitted to the public service commission of New York state in June, 1943, was stalemated by the commission's ruling that the system depreciation reserve should be increased by approximately $65,000,000, to conform to a retroactive straight-line basis. The question was carried to the courts and no decision has been reached. In the meantime, however, Niagara Hudson has proceeded with some of its system-refunding plans, instead of awaiting consummation of the system merger and recapitalization.

An important segment of the Niagara Hudson system—with nearly half of gross revenues—is controlled through a subholding company, Buffalo, Niagara & Eastern Power Corporation. This company has first and second preferred, class A, and common stock issues, the two latter being held by Niagara Hudson Power. No dividends have been paid on the class A and common since 1937, and dividends on the two preferred stocks were also discontinued about the middle of 1942—not for lack of earning power, but due to difficulties arising from the proposed adjustment of subsidiary plant accounts. Certain holders of the $1.60 (second) preferred stock, of which 2,096,725 shares are outstanding, sometime ago petitioned the SEC for a separate merger-reorganization of the subholding company system; and on June 20th a partial recapitalization of BN&E was ordered by the SEC. This called for substitution of a single class of new common stock for the outstanding $1.60 preferred, class A, and common stocks. While the commission indicated that there was little reason for the subholding company's existence, it did not order its dissolution, terming the recapitalization an initial move toward compliance with § 11.

The immediate problem is, therefore, to develop a formula for apportionment of the new common stock between the public holders of the $1.60 preferred, and Niagara Hudson Power as sole owner of the class A and common stocks. On October 3rd separate plans were filed with the SEC by Niagara Hudson and BN&E, similar in broad outline except for the allocation of the new common stock. BN&E would allocate only 9 per cent of this stock to Niagara Hudson Power (the balance going to the $1.60 preferred), while Niagara Hudson under its own plan would acquire 35 per cent. The first preferred stock would be refunded by a new 4 per cent issue, and certain subsidiaries would be merged with the holding company. While first preferred stockholders would receive their arrears in cash, nothing would be paid to holders of the second preferred (on which arrears will amount to $4 at the end of this year), except for dividends accruing from January 1, 1945, to the date of consummation of the plan. (BN&E proposal).

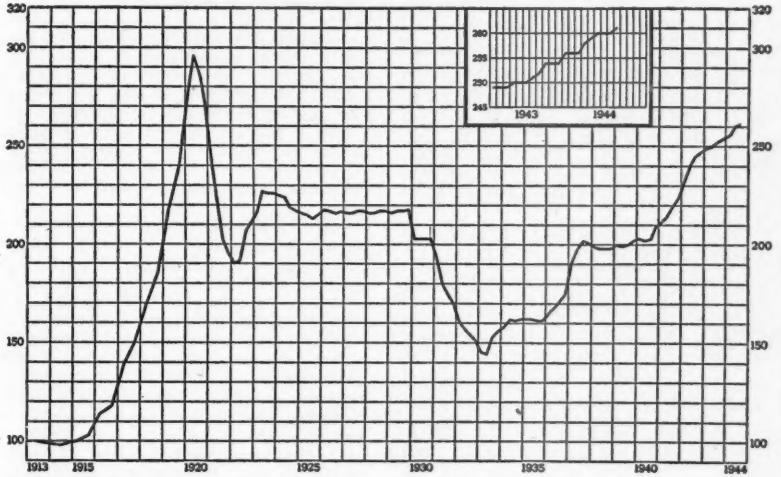
Construction Costs Continue To Climb

THE American Appraisal Company construction cost indexes and graph, reproduced herewith from the company's service bulletin, indicates that the government's anti-inflation program has apparently been unsuccessful in this particular segment of our economy. However, the rate of advance in the index has been slower since OPA controls became effective than in the preceding war years. If the present rate of advance continues, costs would again reach their 1920 peak some time in 1946.

The American Appraisal Company Construction Cost Indexes and Graph

Cost Indexes of Average Construction and Representative Items of Material and Labor

The National Average Construction Index is based on four types of buildings — Frame, Brick, Concrete, and Steel — in thirty representative cities.



	Prewar Normal 1926	Depression Low 1933	1943	June 1944	July 1944	Aug. 1944
NATIONAL AVERAGE	217	150	252	260	260	261
Twenty-two Typical Cities						
Boston	224	163	254	260	260	260
New York	234	167	254	266	266	266
Buffalo	219	150	256	270	270	270
Baltimore	224	158	256	264	264	264
Philadelphia	225	156	254	262	263	263
Pittsburgh	236	161	259	265	265	265
Cincinnati	212	151	250	263	263	266
Cleveland	233	151	249	257	260	260
Chicago	219	156	244	250	250	250
Indianapolis	219	150	257	266	266	266
Detroit	224	146	259	269	269	269
Milwaukee	218	141	264	268	268	270
Minneapolis	197	146	241	250	250	250
Kansas City	220	149	249	255	255	255
St. Louis	230	156	245	252	252	252
Atlanta	211	142	257	267	267	267
Dallas	204	139	224	237	238	238
New Orleans	217	141	244	258	260	262
Denver	204	141	233	235	235	238
Seattle	199	136	255	267	267	269
San Francisco	188	138	232	236	237	238
Los Angeles	195	134	236	238	240	241

These indexes are based on 100 for 1913, and average cost under normal conditions with no allowance for strikes or overtime premiums for special conditions. The indexes reflect the cost trend in each city but do not indicate the relative trend between cities.

From the American Appraisal Company bulletin.

What Others Think

Wickard Stumps West for REA

SECRETARY of Agriculture Claude R. Wickard, during recent weeks, has made a number of appearances in various middle western and southwestern cities on a so-called "nonpolitical" speech-making tour advocating the expansion of REA activities. The "nonpolitical" character of Secretary Wickard's REA speeches was emphasized to distinguish them from a series of speeches he was later scheduled to make of an avowedly "political" character to help the administration during the recent presidential campaign.

Wickard actually opened his series of speeches on behalf of REA at a quarterly meeting of the Wisconsin Electric Coöperatives in Neillsville, Wisconsin, on September 28th. After outlining accomplishments of REA and calling attention to the fact that more than 800 coöperatives are now providing service to more than 1,000,000 farm homes, the Secretary emphasized the importance of area coverage in postwar planning and the need of authority from Congress to say that loan funds will be advanced just as rapidly as construction can go forward. Secretary Wickard said:

> A big step has already been made in this direction by the recent enactment of an important agricultural measure known as the Pace Bill. This bill contains authorization for annual appropriations or extension of borrowing power in any amount needed to fulfill REA needs as Congress sees them. In that respect I should like to repeat what Senator Russell, chairman of the Senate Agricultural Appropriation subcommittee, said to me last week when we were talking over some of these matters. He said: "Claude, you know that Congress has never failed to give you whatever funds you needed to build REA lines." And the record most certainly bears out his statement. The Congress has never failed to provide all the funds necessary for REA construction.
>
> However, completely to reassure farm people and public service commissions of the ability of REA to obtain the funds necessary to carry out a comprehensive program that will provide service for all, I have suggested an amendment to the Lucas Bill. As some of you know, the Rural Electrification Administration has drawn up a 3-year postwar construction program that will involve a total expenditure of approximately $585,000,000. It was my suggestion to Senator Lucas that he amend his bill in such a way as to give REA authority to make commitments for construction over a 3-year period in the sum of $585,000,000. Senator Lucas has accepted this suggestion. . .
>
> In the postwar period, as we shift our economy from a war to peacetime basis, the employment and industrial demand which will be created by a wide extension of rural electrification may be equally as important as benefits accruing directly to agriculture. As a matter of fact, I know of no other program—self-liquidating as the REA program is, or otherwise—which can offer greater possibility for quickly stimulating postwar employment and industrial demand. . .
>
> Rural electrification helps farmers be more efficient and therefore more prosperous. At the same time it creates jobs for city people, which also means better prices for farm products. This interdependence is one of the reasons why we have made an expanded rural electrification program a vital part of our postwar planning activities.
>
> This expanded REA program is a mighty challenge to the farm people of the nation and to the coöperative movement. If that challenge is accepted and the completion of the rural electrification job goes forward with dispatch and efficiency, you will earn the gratitude of agriculture, labor, and industry. The accomplishment will be unique in the whole history of the coöperative movement.

SUBSEQUENTLY Secretary Wickard spoke in Louisville, Kansas City, and Oklahoma City. He developed practically the same message, stressing the idea that no one should be permitted to build electric power lines for "cream

skimming of profits." In his Louisville address before the Kentucky Rural Electric Coöperative Corporation on October 9th, Secretary Wickard stated:

> It is well known that surveys are being made by utilities for the purpose of erecting lines in lucrative territories. I know very well how happy the farm people in these territories are because of their long desire for central station service.
>
> But I also know that those farm families are too neighborly and too unselfish to do anything which would deprive others of the advantages which they want and need themselves.
>
> But unless you and I and everyone interested in the welfare of rural people present the real situation to them they will never realize that their obtaining of electricity may be at the cost of denying someone else the same privilege.

Three principles must guide future, particularly postwar, Rural Electrification Administration policy, the Secretary declared. He cited them as follows:

1. Rural homes need electricity as much, if not more, than city homes to provide a decent living standard and for efficient farming.
2. Furnishing of electricity to rural patrons should be looked on as an opportunity for service rather than as a means for making a profit.
3. REA coöperatives offer the best means of getting electric service to a maximum number of rural people at the earliest date because REA coöperatives, the same as all true coöperatives, are organized for service and not for profits.

Postwar employment and industrial demand which will be created by a wide extension of rural electrification may be almost as important as benefits accruing directly to agriculture, Wickard declared.

He said that it is estimated that rural electrification projects costing $585,000,000 would provide more than 600,000 man-years of work and that construction would be carried on in practically all of the 2,300 counties now served by REA-financed systems and in additional counties where new systems may be constructed.

THE Agriculture Secretary's remarks were taken in some quarters as being the possible forerunner of an REA drive to eliminate the present statutory restriction in the Rural Electrification Act which more or less requires REA co-ops to confine their operations to "creamless" territory and assumes that private utilities will take care of the electric utility business in the more populous community. This is the statutory restriction against REA loans for operations in communities of more than 1,500.

The Secretary of Agriculture did not explain just why his remarks seemed to depart from the implied intent of Congress under the existing law to make REA activities supplemental to established public utility service, bringing power to rural areas which could not profitably be served by private companies.

Truman Pledges New Deal Aid to Missouri Valley Authority

PRESIDENT Roosevelt was pledged by Senator Truman, in a campaign speech at New Orleans on October 12th, to sponsor the further development of water power through a planned system of reservoirs and dams and the expansion of river transportation.

The Democratic vice presidential nominee told the Mississippi River Flood Control Association that the President's program included the creation of a Missouri Valley Authority which, he said, would bring "new wealth, new opportunity, and new security to millions of our people."

"We are hearing much in the present political campaign about 'free enterprise,'" he continued. "We are being told

by those with little experience and with little real knowledge that free enterprise is being stamped out by your government in Washington," but added: "This campaign oratory will not fool the people of America," because "free enterprise" is "thriving and healthy" in the area served by the Tennessee Valley Authority, where, he said, "both big and little business" are "booming."

The address, his second of the day, was the last of what he called "nonpolitical" speeches before his scheduled departure for the first major "political" address at Los Angeles October 16th on a 7,500-mile transcontinental campaign tour that was to carry him to New York for a Madison Square Garden appearance October 31st.

AFTER saying that machinery to carry out flood-control plans "must be ready when hostilities cease," and that "we no longer can afford to send a boy on a man's errand," Mr. Truman departed from his prepared speech to assert: "And don't forget that on November 7th, either."

With "the greatest age in history approaching," he added that he believed that "Almighty God intends that we should assume the leadership which He intended us to assume in 1920 and which we refused to assume."

In an earlier radio address beamed to Mississippi valley states, he asked for "fighting support" of Mr. Roosevelt's flood-control policies, saying, "We must not leave the job half done."

"I want to see every farmer and city dweller safe from the ravages of flood, and I want to see them happy and prosperous in the enjoyment of conveniences and labor-saving devices made possible by cheap and abundant power," he said.

These things can be accomplished "if we have the determination and vision to act boldly and fast," he continued, adding: "This administration has demonstrated that it has that kind of determination and vision. Its efforts are worthy of fighting support. We must not leave the job half done."

Taking the same theme at the association meeting, he declared that the Roosevelt administration, recognizing water as "the most valuable of natural resources," would not cease "to fight for the continuation of policies which for the first time in our country's history have been designed to bring the greatest good to the greatest many."

Differences in the Missouri valley over water control, he added, are "now being reconciled" as they previously were reconciled in the Tennessee river area—"not by sacrifice of the American system of free enterprise—not by the creation of a Wall Street-dominated private monopoly—but by the ability of Americans to intelligently determine their common needs and to carry out plans to fulfill them."

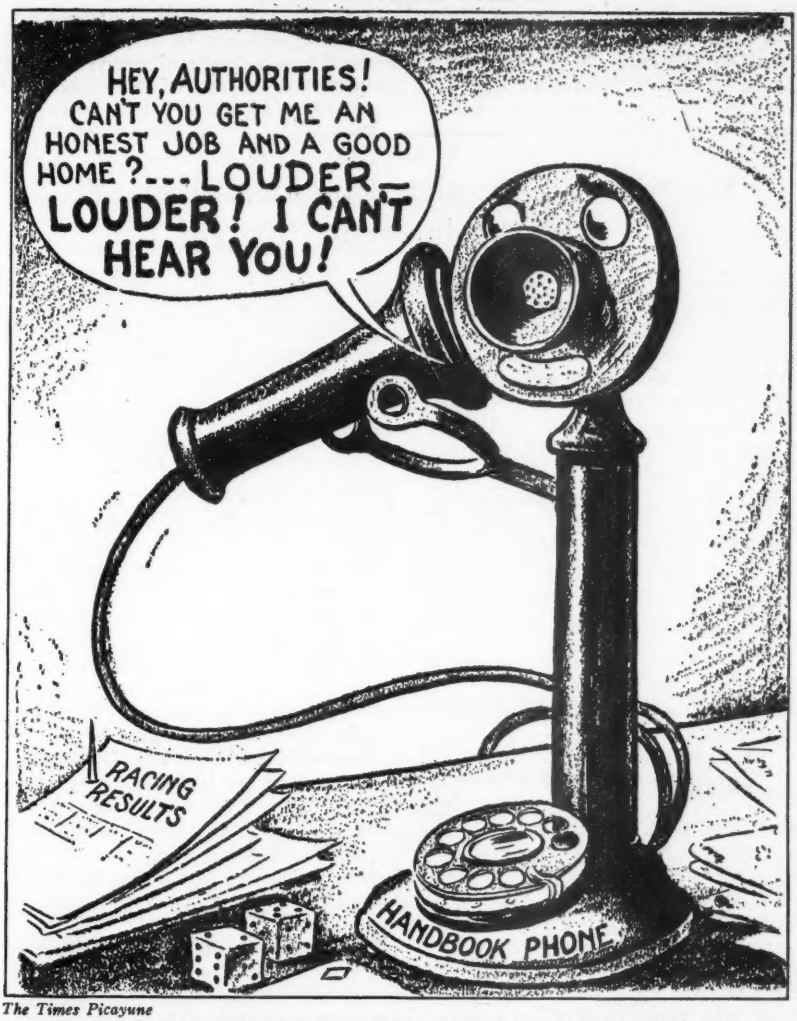
"This administration will not let the progress in river transportation subside," Mr. Truman said, and in postwar years the benefits of inland waterways "will be made available to farmers, to miners, to industrial plants, and to consumers of all products which lend themselves to water shipment."

WITHOUT TVA and other "great power projects so bitterly attacked by the utility interests as socialistic schemes of the New Dealers to ruin private industry," he asserted, "we would not have had sufficient power to make the aluminum for the planes that are now hurling destruction upon the Germans and the Japs."

Other power projects that have been planned "must be put into execution," Mr. Truman continued. "Plans for still others should be initiated now. Your government is working on all this right now so that when hostilities cease, we can act quickly."

Saying reservoirs which serve only the one purpose of preventing floods usually involve "prohibitive costs," but may prove "great bargains" when the waters they impound are used for power, navigation, and soil conservation, Mr. Truman added:

We were fortunate to have a President



The Times Picayune

IT'S A JOB FOR THE AUTHORITIES—NOT THE PHONE COMPANY

with the vision and courage to back the creation of the Tennessee Valley Authority. Floods are now under control in the Tennessee valley, and that helps the whole Mississippi valley. If we could do the same thing in the Missouri and several of the other great rivers, the problem of flood control would be on its way toward a permanent solution.

Meanwhile, the Flood Control Association adopted resolutions urging Congress to provide funds to maintain adequate flood-control works, but opposing what it called "regional valley authorities." The association said:

> We reaffirm our undeviating opposition to the creation or extension of so-called regional or valley authorities which are vociferously supported by small majorities seeking to radically change important fundamental principles of our democratic government.

The association declared that there was a "lack of coördination" between such authorities and the Federal government. Another resolution opposed amendment to the Flood Control Bill to remove supervision of rivers from the Federal government and give veto power on proposed projects of the states.

Electrical Wholesalers Consider Veterans' Reëmployment Program

An outline for a veterans' reëmployment program was recently submitted to the members of the National Electrical Wholesalers Association as an outgrowth of discussion on the subject which was held at the conference of the International Electrical Leagues in Detroit last September. The NEWA program is designed to assist the employment of returning veterans by the electric industry in a manner which will surpass and overtake any program that might simply be part of a general, municipal, or government plan. Four steps are outlined:

1. We must develop local industry coöperation.
2. We must create interest in the plan in the minds of those seeking new jobs.
3. We must arrange for the equitable distribution throughout the electrical industry of applicants for employment.
4. We should exchange information and data between local activities to bring about national results.

Under the first heading the NEWA program suggests that meetings by principals of all establishments in the electric industry should be held, to determine employment demands which the future will make on the industry and to devise ways and means for paying the cost through a sustaining program. Such a sustaining program would be one in which various branches of the electric industry contribute a percentage of the estimated cost and the local power company contributes an additional amount to equal the estimated cost of the program.

Under the heading of creation of interest in electric industry employment, the NEWA observes that the industry will need men for all of its various divisions, such as appliance repairmen, salesmen, motor, elevator, and oil burner repairmen, electricians, clerical and store helpers, power company personnel, etc. To recruit the best employees it is necessary to bring before prospective employees (civilians and veterans) the many advantages to be found through employment in the electric industry.

It was suggested that the first phase to create interest might be the use of a display card in every possible electric dealer shop, store, and office location; and wherever possible in the USO, draft board, ration board, veterans' hospital, and personnel offices in the local area. This display card, briefly calling attention to the advantages offered by the electric industry, would suggest that the reader ask for a booklet describing further opportunities within that field. This booklet would outline the industry's war effort accomplishments, contain pictures of stores and shops, scenes of actual electric appliance repair, construction, and maintenance work being done by electricians and power company operators, and so forth.

Presuming that a certain amount of desire to find employment within the industry will be thus created, this brochure would be accompanied by a return postcard on which prospective employees would be urged to request an individual application. Such application in turn would be sent with a letter asking the applicant to complete the form and return it for a personal interview. This becomes part of an employee file after a personal interview has been had with the applicant.

Much better results, it is said, would

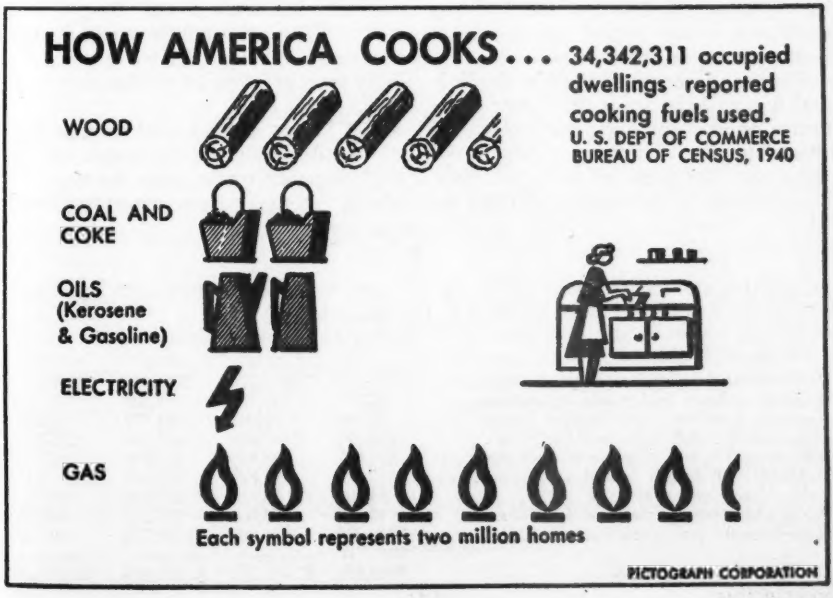
be obtained if the local league or some central clearing house handles all interviews. As soon as this matching of abilities and requirements has been made, the prospective employee will be given letters of introduction to several establishments needing his services.

In addition to the display cards and booklets, the NEWA's program suggests that a wider local interest would be created by classified newspaper advertisements, radio spots, streetcar cards, etc. This would be necessary if the industry is to get the thousands of applications which will be necessary to take in enough top quality men into the industry within two years.

Also suggested is a periodical bulletin listing applications for jobs. This might be especially valuable to fitting applicants in an out of the way place in a job in an equally out of the way place. For equitable distribution of applicants the NEWA program states in part:

> As another essential to the success of the program, it is necessary that each participating principal furnish the central clearing office with a list of the number of employees that he is in need of, this list to be divided into skills and further indicate the hours of work and special requirements for each particular job. Upon receipt of these lists they will be broken down into card form within the particular skills common to the industry, forming a file which will be used in matching the skills of the applicants. In this way, each prospective employer will be assured the type of help best suited to its need; and, furthermore, avoid putting round pegs into square holes, a thing which is very common unless the applicants are screened, and the skills are matched before giving the prospective employee a letter of introduction. All participating member firms *will receive the form* asking them for their list of help wanted at the same time. Requests for help will be filled in order of their receipt.

THE NEWA finally suggests that the local leagues may interchange data with other areas so as to formulate through such exchange a national program enabling an applicant in one section to find employment in his chosen locality. This might involve some compensation or reciprocal arrangement between clearing houses to equalize the participation



costs for so-called "foreign placements."

In conclusion the report states that the electric industry is at present seriously undermanned and that a large number of servicemen and civilians will be available within a reasonable length of time as a result of the end of the German war and expected cutbacks in war production.

With these known facts it is submitted that the industry should seize its opportunity to dramatize its advantages so as to attract the better type of men and women who are seeking new connections.

Speed on Public Postwar Projects Urged

PUBLIC utility projects other than water, sanitation, and bridge developments do not rank very high in the list of postwar state and local projects so far reported by the Federal Works Agency to the House Committee on Postwar Economic Policy and Planning. In fact, they do not even rate a classification of their own, according to an analysis recently made public by H. E. Foreman, managing director of the Associated General Contractors of America, the trade association of leading construction firms.

Mr. Foreman's announcement called for the expedition of plans for postwar public projects by state and local governments, if they are to have any particular effect on employment and business conditions in the period of transition from war to peacetime.

Results of the survey made by the Federal Works Agency for the House Committee on Postwar Economic Policy and Planning, Mr. Foreman pointed out, show that the plans of state and local governments in the completed stage total $969,858,000, as compared to a total of $1,749,242,000 in the design stage, $3,701,884,000 in the preliminary stage, and $6,297,387,000 in the idea stage.

"More of these plans need to be brought to the completed stage," he said, "because it usually takes longer to bring such projects to the start-work stage than it does to build them."

Local committees for economic development, chambers of commerce, and other local groups are developing well-planned programs in many communities, he stated, "but there is an urgent need for the Federal government to establish a definite policy with respect to assistance to state and local governments in the planning and construction of their public works. The lack of such a policy is undoubtedly causing local governments to delay their planning of needed projects."

"THERE is also a need for a prompt definition by Congress of the field of public works after the war," he added, "so that private enterprise could

SUMMARY OF ESTIMATED COST OF PUBLIC WORKS BY TYPE OF PROJECT
(Amounts in Thousands)

Type of Project	*Completed Stage*	*Design Stage*	*Preliminary Stage*	*Idea Stage*
Highways, roads, and streets	$176,243	$351,776	$786,439	$1,392,036
Bridges, viaducts, and grade separations	92,152	119,526	319,989	427,710
Airports, terminals, and landing strips	28,296	60,962	151,172	270,095
Sewer, water, and sanitation facilities	258,079	463,406	860,341	1,277,120
Schools and other educational facilities	110,027	218,148	355,783	627,346
Hospitals and health facilities	57,118	91,829	176,069	291,156
Public buildings	54,090	73,720	208,204	669,859
Parks and other recreational facilities	49,577	73,866	185,149	418,593
Miscellaneous public facilities	144,276	296,009	658,738	923,472
Totals	$969,858	$1,749,242	$3,701,884	$6,297,387

know in which fields it would be free to function and in which fields it could expect government competition."

In an active economy, he explained, private construction usually accounts for two-thirds of the total construction, and private enterprise furnishes the largest part of employment.

Mr. Foreman said the AGC had made a careful study of the results of the FWA survey, and he released tabulations which his organization had made of the data to show the need for the completion of more plans (page 644).

The total estimated cost of the projects was also broken down according to states in the announcement released by Mr. Foreman.

Program Report on Rural Electrification

THE Rural Electrification Administration has announced estimates of unelectrified farms, by states, as of July 1, 1944. On the basis of these estimates, as required by the Rural Electrification Act of 1936, half of the REA loan funds available for the current fiscal year were allocated. These earmarked funds totaling $12,500,000 will be reserved for loans in the designated states during that period.

REA officials again emphasized the fact that no funds will be made available on applications which do not comply fully with War Production Board regulations.

The following table shows the allocations and the estimates on which they are based:

	Farms without Central Station Electric Service July 1, 1944	*Allotment for Loans during the Fiscal Year Ending June 30, 1945*
United States	3,523,839	$12,500,000
Alabama	171,246	607,455
Arizona	10,368	36,778
Arkansas	178,774	634,159
California	14,058	49,868
Colorado	27,236	96,613
Connecticut	2,363	8,382
Delaware	3,894	13,813
Florida	41,748	148,091
Georgia	143,933	510,569
Idaho	10,463	37,115
Illinois	97,939	347,416
Indiana	55,049	195,274
Iowa	97,118	344,504
Kansas	115,127	408,386
Kentucky	191,394	678,926
Louisiana	123,807	439,177
Maine	15,480	54,912
Maryland	16,575	58,796
Massachusetts	4,597	16,307
Michigan	33,889	120,213
Minnesota	112,851	400,313
Mississippi	243,292	863,022
Missouri	191,400	678,947
Montana	31,023	110,047
Nebraska	86,662	307,413
Nevada	1,813	6,431
New Hampshire	2,854	10,124
New Jersey	2,435	8,638
New Mexico	27,205	96,504
New York	35,038	124,289
North Carolina	179,776	637,714
North Dakota	68,162	241,789
Ohio	52,883	187,590
Oklahoma	145,887	517,500
Oregon	14,129	50,119
Pennsylvania	56,227	199,452
Rhode Island	114	404
South Carolina	85,258	302,433
South Dakota	64,654	229,345
Tennessee	185,917	659,497
Texas	287,802	1,020,911
Utah	5,711	20,259
Vermont	8,182	29,024
Virginia	116,885	414,622
Washington	14,986	53,159
West Virginia	66,182	234,765
Wisconsin	71,735	254,463
Wyoming	9,718	34,472

THESE state-by-state allotments do not mean that loans in exactly that amount will necessarily be made in the various states. It simply means that proportionate funds are being held subject to applications from those states for loans which may or may not be finally approved to the extent of the full amount of their respective state quotas.

The March of Events

No Outdoor Yule Lights

A CONTINUATION of the volunteer dim-out of outdoor Christmas lighting through the 1944 season was urged by the War Production Board last month as a fuel-saving measure.

The WPB Office of War Utilities appealed to city officials, civic groups, chambers of commerce, merchants, and "citizens generally" to dispense with decorative lighting as they did in 1942 and 1943.

The WPB made it clear that it was not asking for indoor Christmas lighting, in either stores or homes, to be eliminated.

League Approves MVA

SUPPORT for the Missouri Valley Authority was expressed in a resolution presented to the biennial congress of the Coöperative League in Chicago recently.

Restoration of the Rural Electrification Administration as an independent Federal agency, divorced from the political control of the Department of Agriculture, was recommended.

The Coöperative League, representing 2,000,000 members of nonprofit associations, was reported to regard the provision of cheap power as vital to improved habitability and prosperity of the Missouri valley and other regions, but its resolutions also took into account the needs of irrigation, reforestation, navigation, and flood control.

It was said to see in the development of the Missouri Valley Authority, as now proposed in several bills before both houses of Congress, a means of controlling freight rates, encouraging decentralization of industry, and contributing to full employment in peacetime.

Okin Loses Fight

SAMUEL OKIN, Manhattan lawyer and owner of 9,000 shares of common stock of the Electric Bond and Share Company, made a determined last stand on October 11th against the management of that utility company but came off second best as stockholders at their annual meeting adopted a resolution voicing confidence in the present management.

The meeting, which was attended by about 300 stockholders, took on much of the pattern of the two preceding years as Mr. Okin hurled charges against the management and engaged in debate with other share owners who attempted to shout him down. His main complaint was that both the Securities and Exchange Commission and executives of the company were aligned against him.

Recently, the SEC took the unprecedented action of barring Mr. Okin from any future participation in hearings or proceedings before it on the ground that he failed to conduct himself in a befitting manner. Another blow was dealt when the SEC obtained an order from Federal Judge John Bright in New York city on the morning of October 11th enjoining Mr. Okin from voting any proxies he had obtained for the meeting. SEC's petition charged the lawyer with having obtained the proxies through "false and misleading" statements in a letter to stockholders.

Mr. Okin's main argument in his remarks to the stockholders was that Bond and Share officials were wasting the company's assets in the United Gas recapitalization by agreeing to a plan, which has been approved by the SEC, whereby the parent concern would accept $44,000,000 in settlement of claims of indebtedness against its United Gas subsidiary.

S. W. Murphy, president of Bond and Share, made it clear that the company had no intention of going out of business because of the Public Utility Holding Company Act.

Urges ICC Cut Rail Fares

CHESTER BOWLES, OPA Administrator, called on the Interstate Commerce Commission on October 16th to reduce a 10 per cent increase in railroad passenger fares which it granted in January, 1942. The ICC said then that the rise would make for "adequate and efficient" transportation for the duration of the war.

Mr. Bowles, contending that the railroads had "enjoyed enormous war profits for three years," appealed to the ICC to revoke also a small rise (now suspended) in freight rates. He said the two increases were "highly inflationary" and "wholly unnecessary for the purpose for which they were allowed."

In a statement which Mr. Bowles said was addressed to the ICC both on his own behalf and that of Fred M. Vinson, Director of Economic Stabilization, the OPA Director said the passenger fare and freight rate increases were incompatible with the "policy and directive" of the President's "hold-the-line" order issued in April, 1943.

The railroads provoked the strongly worded

statement by petitioning the ICC for a return of the 3-to-6 per cent rise in freight rates which has been suspended since May, 1943. The roads were scheduled to go before the ICC in further hearings on October 23rd, when the Office of Price Administration was to voice its opposition to continuing the rate increases on January 1, 1945, as they are scheduled.

Cities Service Upheld by SEC

THE Securities and Exchange Commission on October 16th reaffirmed the right of the Cities Service Company to retain all of its oil business rather than to be confined to a single integrated utility system and only a small portion of its nonutility business.

"It is clear in light of the (Public Utility Holding Company) statute and our opinion of May 5, 1944, that Cities may fully comply with § 11(b)(1) by disposing of its interest in utilities," the SEC said. "Moreover, since Cities is predominantly an oil company and in any event, as we have found, would be unable under § 11(b)(1) to retain more than one of its utility systems, we think that Cities' decision to remain in the oil business rather than the utility business is appropriate, and in the public interest and the interests of investors and consumers."

The company told the SEC that it did not intend to take an appeal from the commission order, electing instead "to retain its oil, wholesale natural gas, and other nonutility businesses intact and without disposing of any thereof."

Transit Line Sold

SALE of common stock and notes of the Cincinnati, Newport & Covington Railway Company, a Columbia Gas & Electric subsidiary, to Charles Allen of New York and Irving K. Weil of New Orleans, was announced in Cincinnati on October 12th.

Negotiations for the $1,900,000 deal had been in progress more than a year.

The announcement came from Messrs. Allen, Weil, and P. G. Vondersmith, who resigned as vice president and general manager of the Union Light, Heat & Power Company, also Columbia-owned, to become president of the CN&C.

The railway operates streetcar service connecting Cincinnati with communities in northern Kentucky.

Columbia Gas & Electric held 9,750 of the 10,000 shares of common stock in the company.

To Aid Electrification

THE Mexican government will invest $20,000,000 in cooperation with private enterprise to electrify Mexico, Economics Minister Gustavo P. Serrano announced recently in Mexico City. Fifteen years will be required to complete the job, which will involve an investment of $300,000,000.

Alabama

FPC Receives Application

THE Federal Power Commission on October 20th announced its receipt of an application filed under § 7 of the Natural Gas Act, as amended, by the Alabama-Tennessee Natural Gas Company, a Delaware corporation having its principal office in Florence, Alabama, for a certificate of public convenience and necessity to construct and operate facilities to make natural gas available to the Reynolds Metals Company at Listerhill, Alabama, Tennessee Valley Authority at Muscle Shoals, and the National Utilities Company which now serves manufactured gas to the cities of Florence, Sheffield, and Tuscumbia, Alabama. The applicant's proposed pipe-line system would consist of approximately 66 miles of 10¾-inch transmission pipe line originating at a point of connection with the pipe line of Tennessee Gas & Transmission Company near Enville, Tennessee, and extending to the plant of Reynolds Metals Company, near Muscle Shoals, Alabama.

The estimated cost of the project is $1,350,186 and the applicant proposes to finance the construction through the issuance and sale of securities. The application stated that the "proposed pipe line will serve natural gas to war industries and essential civilian users in the area in which it proposes to operate." These industries and consumers are now without natural gas and are anxious to obtain its benefits, the application said.

The Alabama-Tennessee Natural Gas Company was organized, the application stated, for the purpose of constructing and operating the facilities covered by the application.

Plans Gas Distribution

A NATURAL gas distribution plant for the city of Sylacauga is being projected by the city council of that city as a prime postwar enterprise, it was announced recently. The proposal has been submitted in detail to city officials and first estimates placed the cost at approximately $500,000.

A survey made for the city disclosed a possible consumer list of 2,300 meters which will provide, at the prevailing Alabama domestic rate, earnings to liquidate the cost of the plant within a short time. J. W. Goodwin, president of the J. W. Goodwin Engineering Company,

who was retained by the city to make the plans, said that the system was designed to use 250,000,000 cubic feet of natural gas per annum. The supply will be furnished by the Southern Natural Gas Company, which has a line to be tapped only 22 miles from Sylacauga. The supply line will be built and owned by the city of Sylacauga.

Arizona

Plans Rate Cuts

THE state corporation commission recently cited all electric, gas, and water utilities in the state of Arizona to show cause on November 6th "why their rates should not be reduced during the months of November and December in sufficient amounts to eliminate excess profits income taxes and appropriately distribute said reductions to their respective consumers."

The order also requires the utilities to estimate as accurately as possible their earnings for the 9-month period ending September 30, 1944, and report the estimates to the commission on or before October 28th.

Arkansas

Gets Rural Allocation

THE Arkansas Power & Light Company was allocated territory to extend rural electrification lines along the right of way of a high-tension power line under construction between Lake Village and Pine Bluff—to farm families in a certain area in Chico county—by the state utilities commission last month.

The commission withheld its opinion on other proposed AP&L extensions in the county until a survey can be made of the territory the power company intends to develop, Chairman Marvin Hathcoat said.

The AP&L's application for a 14-mile extension in the county was opposed by the Ashley-Chicot-Union Coöperative. The coöperative said it proposed to build lines after present restrictions on materials are lifted in the same area as that sought by the AP&L.

The power company contended that farmers, across whose lands the larger power line would extend, have refused to give up right of way unless they are furnished electricity.

In an effort to forestall postwar rural electrification plans of the AP&L, the Rural Electrification Administration was reported to have sent its key men to Little Rock for a hurriedly called meeting with state electric coöperative leaders.

Headed by William J. Neal, deputy REA Administrator at St. Louis headquarters, six REA executives reached an agreement with the Arkansas State Electric Coöperative Corporation for an REA loan of $18,500,000 to service about 55,150 Arkansas farms with electricity after the war.

T. E. Bostick of Augusta, vice president of the Arkansas State Electric Coöperative, said electric co-öps of the state do not want to take over cities and industrial areas from the Arkansas Power & Light Company but they are anxious to do a complete job of rural electrification without being hampered by AP&L "spite lines."

Replying to C. Hamilton Moses, AP&L president, who said that Washington bureaus would not be allowed to take over the power industry in Arkansas without a fight, Mr. Bostick said his organization was not seeking a fight, but he indicated his group intends to stick to its plans.

Mr. Bostick said the state coöperatives' plan to extend lines to 55,000 customers was not "too ambitious," as Mr. Moses had termed it. Approximately 173,000 of the state's 216,674 farms (the 1940 census figure) are now without electricity, he said.

Mr. Moses said "the government's willingness to socialize our industries and take over our business has influenced the AP&L to extend its rural development program in some sections below the 'good business' line in order to eliminate the outstanding threat to our peace and life."

Power Rate Reduced

A CONTRACT reducing by 13 per cent the rate for electricity purchased by North Little Rock from the Arkansas Power & Light Company was ratified by the city council last month. Its effective date was said to be dependent on signatures of AP&L officials.

The contract is retroactive to October 1, 1943, and will be effective through October 1, 1953, when it will be automatically extended for one-year periods until ended by written notice from one of the parties.

Superintendent V. H. Beal of the city electric department said the contract was the "fruit of a year's labor." The amount of the rate reduction has been discussed since the contract with AP&L expired last year.

It was indicated by city officials that as soon as possible the saving would be passed on to the public through lower electric bills. Mayor Neely said the reduction would amount to about $18,000 or $19,000 annually for the city.

Connecticut

FPC Vacates Order

THE Federal Power Commission on October 20th announced its order vacating its order of September 1st suspending the rate schedule filed by the Connecticut Power Company, New London, providing for the sale of electric energy to the Torrington Electric Light Company for resale by the latter in Torrington and vicinity.

The commission's recent order was adopted following a field examination by the Federal Power Commission staff into matters involved in the proposed rate increases, and a conference with the Connecticut Public Utilities Commission.

District of Columbia

Overcharged for Electricity

THE United States government, largest customer of the Potomac Electric Power Company, alleged recently that District taxpayers are overcharged for their electric power by $2,540,000 a year in a petition asking the district court to force the public utilities commission to revise its rate findings of last July. The appeal was filed in district court by Francis M. Shea and United States Attorney Edward M. Curran for the Public Buildings Administration and the Treasury Procurement Division, which allege they provide PEPCO with a fourth of its annual gross income or $6,000,000.

The petition stated an application for reconsideration was filed with the commission in August but was denied by the District's rate-setting authority. It said the commission had committed a number of errors of law in preventing presentation of evidence by the government, which intervened at the hearings. It was also asserted that the commission's findings were based on a wrong basis for the establishment of the sliding scale thereby violating the commission's duty to give the company only a "just and reasonable return." The court was asked to order correction of these alleged errors and to send the case back to the commission.

PEPCO has appealed to the court to set aside the commission order because reductions ordered by the PUC were "too drastic."

Illinois

Study Ordered on Purchase Plan

AN investigation to determine whether it would be advantageous for the city to purchase the Chicago Rapid Transit Company (elevated lines) and the Chicago Motor Coach Company was ordered last month by the city council.

The study will be made by the local transportation committee, headed by Alderman Quinn, who introduced the resolution. His committee will learn the price the companies would ask for their business, the price the city could pay, and other factors.

Quinn said statements for 1943 showed the two transportation systems collected 250,000,000 fares.

"It is time something was done about the transportation systems in Chicago, which have been in a muddle for years," he said. "Maybe municipal ownership and operation is the answer."

Mayor Kelly said he was in favor of the study. All agreed that the systems should not be purchased before the proposal is examined.

Quinn's resolution followed the recent collapse of negotiations through which the city hoped to acquire the surface lines. The streetcar company would not be a good investment for the city, Quinn said. Seventy per cent of the rolling stock is at least thirty years old, he observed.

Indiana

Suit Halts Trolley Hearing

ANOTHER delaying action, this time a Marion County Circuit Court suit, has been started by Indianapolis Railways, Inc., in its efforts to end a state public service commission investigation of the utility's financial structure and fare schedule.

Attorneys for the company have filed suit before Judge Earl R. Cox, in Marion County Circuit Court, seeking a declaratory judgment to disqualify Hugh W. Abbett, chairman of

the commission, from further participation in the rate case. The suit contains allegations similar to those in a motion to dismiss the proceedings which was overruled recently by the commission.

The year-old rate case has been delayed from time to time by various motions filed by the company. Commission members were expected to set a date for resumption of the hearings. It was considered likely that a new date would not be set until the circuit court case is decided. The commission has completed its evidence and utility witnesses will be heard when the case is resumed.

In the circuit court suit, the streetcar company alleges that Mr. Abbett is not qualified to serve as a hearing member because he testified for the commission in the early stages of the investigation. At that time Mr. Abbett was chief engineer for the commission.

Announcement was made later that the state commission would resist the suit brought by Indianapolis Railways. After conferring with the attorney general's office, William F. Dudine, public counsellor, said the first step would be to file a motion for the commission to intervene as a commission. The suit brought by the utility was against individual members of the commission, and not the commission as such.

Kansas

Municipal "Tax" Approved

A BILL which would provide that debt-free municipal utilities contribute at least 3 per cent of gross earnings for governmental purposes other than utility operation was approved recently by the Kansas Association of Municipal Utilities legislative committee.

Under the bill, it was explained, it would be possible that as much as 20 per cent of gross earnings could be transferred. However, the transfer of only 3 per cent would be a mandatory obligation of debt-free plants.

James D. Donovan, Kansas City, Kansas, has been reëlected president of the association.

Kentucky

Postwar Competition Indicated

SPIRITED competition between privately owned utilities and the Rural Electrification Administration for rural consumers after the war was indicated at Frankfort on October 18th when Kentucky Utilities asked the state public service commission for permission to extend existing rural lines 704 miles in 64 Kentucky counties.

The proposed KU extensions would cost $810,000 and are designed to give electric service to 4,246 prospective new customers in rural areas.

The commission set the petition for public hearing November 22nd.

Other significant developments in this field recently were:

1. H. Curtis Brown, Brandenburg, president of the Kentucky Rural Electric Coöperative Corporation, recently announced a 3-year postwar plan to make KREC power available to 46,600 new customers in Kentucky, at an estimated cost of $24,000,000.

2. Now in final stages of adjudication before the state commission is an application of Kentucky-West Virginia Power Company to build 1,186 miles of rural line extensions in 16 counties of east Kentucky, thereby extending electric service to 7,500 prospective new customers.

REA coöperatives in the 16-county area are opposing the Kentucky-West Virginia's expansion on grounds it would infringe on their own territory for future expansion.

Vigorous competition for rural expansion after the war is being planned throughout the nation, as well as in Kentucky, it was said by Hugh B. Bearden, consultant to the state commission.

The privately owned utilities, he explained, have at last junked their old yardstick for rural investment, and are now prepared to spend money with more boldness. By the old yardstick, he added, utilities would not make rural investments unless revenue would retire construction costs in three years. The amortization period now has been extended to as high as fifteen years.

Washington Reed, vice president of Kentucky Utilities, set out in the petition his company wants to expand rural services as quickly as materials are available. KU now has 19,000 consumers in rural areas, he noted.

The greatest extension KU proposes is 75 miles in Bell county. Extensions of more than 20 miles each are planned in 9 other counties, as follows: Bracken, 21 miles; Caldwell, 28; Harlan, 32; Henry, 21; Hopkins, 40; Knox, 36; Madison, 24; Muhlenberg, 32; and Woodford, 24.

Proposed extensions in the other 54 counties range from one-half mile each in Robertson and Marion, to 17 miles in Shelby.

Mississippi

Must Pay State Tax

THE state supreme court ruled last month that some of the earnings that the Memphis Natural Gas Company is making from sales of its Monroe, Louisiana, purchased gas is subject to the Mississippi income tax. The Memphis Company sells gas to the Mississippi Power & Light Company, which distributes it to 16 Delta communities.

The ruling by the state court grew out of a suit by the state tax commission to collect approximately $65,000 in state income taxes on the gas sold from 1937 to 1941.

New York

Union Boycott Declared Legal

HOLDING itself bound by United States Supreme Court precedents, the circuit court of appeals on October 14th set aside an injunction and declaratory judgment of illegality that had been issued by the Federal District Court against an admittedly uneconomic boycott enforced by Local 3 of the International Brotherhood of Electrical Workers against eleven major electrical manufacturers.

The court said it was apparent that the boycott had in some cases raised the cost of electrical equipment in New York city to twice or three times the cost at which it might otherwise have been purchased, and suggested, in effect, that the only curb on "some of the abuses of power which exist" rested in legislative action.

In effect, the court's decision legalized a boycott through which Local 3 of the IBEW, an American Federation of Labor affiliate, excludes from the New York city market products made outside the city by concerns with which it has no contracts. Most of the products are those used in construction work.

A 2-to-1 decision, written by Judge Charles Clark, with Judge Augustus N. Hand concurring, cited the Supreme Court decisions in the cases of the International Brotherhood of Carpenters, the International Hod Carriers, and what was termed the "controlling case" of the American Federation of Musicians. In the musicians' case the highest court upheld the union's nation-wide ban on recorded music.

"These cases," the majority decision said, "are too closely similar to the case at bar, indeed going beyond it in some aspects, to permit the broad adjudication of illegality here and the injunction based upon it to stand."

In his dissenting opinion Judge Thomas W. Swan said he thought the injunction issued by the lower court too sweeping, but said he did not feel the Supreme Court decisions provide a basis for unions to "agree with their employers to enforce a boycott for the very purpose of restraining commerce and increasing the price of articles manufactured or dealt in by their employers within a local market area."

The case on which decision was rendered last month dated back to December, 1935, when the eleven electrical manufacturing concerns, including General Electric, Westinghouse, and Allis-Chalmers, filed suit for the injunction and also asked for treble damages under the Sherman Act. This last issue had remained pending in district court without trial.

Readjustment Ordered

THE state public service commission, after determining the original cost of the utility property of the Republic Light, Heat & Power Company, Inc., recently ordered a $1,800,383 adjustment in plant accounts as of March 31, 1938.

The company, a unit of the Cities Service system, serves natural and manufactured gas in western New York, including all or parts of Ontario, Livingston, Monroe, Genesee, Wyoming, Erie, and Niagara counties.

South Carolina

Utility Vote

THE Columbia city council recently authorized a special election for November 28th at which citizens will vote on the question of whether the city should acquire the properties of the South Carolina Electric & Gas Company.

Mayor Fred D. Marshall called a special meeting for October 12th and advised members of the city council that the ordinance setting the election date would be introduced.

In order to be eligible to register in the city special election, a person must hold a county registration certificate and must have been a resident of the city for at least four months prior to the election.

The requirements for voting are twofold:

The person must hold a city registration certificate, and a male citizen must have paid his county and city taxes. Women are not required to pay taxes.

The special election would be conducted as other elections. Under the law the books must be opened thirty days prior to the election.

The General Gas & Electric Company, parent company of the South Carolina Electric & Gas Company, advised city officials on October 11th that it would sell the properties in Columbia if the citizens desire to buy them.

Purchase price of the properties has been fixed at $39,500,000 and of this amount $500,000 will be turned over to the city to be used as working capital.

Mayor Marshall pointed out that the city would make an annual profit of approximately $1,260,000 a year.

Representatives of the firm of Wingfield and Henkel, Inc., consulting engineers of Washington, D. C., have been employed by the city council to analyze the proposed acquisition. The engineering firm will look into the matter of property values and earnings and report to the council.

Tennessee

Planning Utility Ownership

THE city commission of Memphis recently took another step toward ownership of the street transportation system when its franchise expires November 20, 1945.

The city employed Burns & McDonnell, public utility engineers of Kansas City, to make a survey and appraisal of the properties owned by the Memphis Street Railway Company. They will receive a $25,000 fee.

Mayor Walter Chandler termed the move "the beginning of proceedings toward negotiating to take over the line."

The city already owns the electric, gas, and water properties in the city of Memphis.

Board Denies Petition

THE state equalization board at Nashville last month denied the petition of Knoxville city officials to increase the assessment of Knoxville Transit Lines to $1,675,000.

The board left the assessment at $1,250,000 as certified by the state railroad and utilities commission.

Knoxville was represented by Finance Director Jack Burrows, Law Director James P. Brown, and Jack Scandlyn of the finance department.

Utah

Rate Reduction Ordered

THE supreme court of Utah last month unanimously affirmed an order of the state public service commission directing a reduction of electric power rates charged its Utah customers by Utah Power & Light Company.

The ruling upheld the commission's order requiring UP&L to reduce its electric power rates by approximately 12 per cent, which will cost the company $1,504,644 annually, based upon the 1941 volume of business.

Under the commission order, the company must pay rebates to its consumers amounting to an estimated $1,500,000, representing the difference between rates now charged and reduced rates ordered effective October 15, 1943. Payments will be retroactive to that date.

The opinion was written by Chief Justice James H. Wolfe, with Justices Martin M. Larson, Roger I. McDonough, and Lester A. Wade concurring. District Judge Will L. Hoyt concurred, but handed down an amended opinion.

The decision ended two years of hearings between the commission and UP&L concerning rate reductions. The case had been under consideration in the supreme court since March.

Chief point of contention was the allegation by the commission that the power company has been earning more than "a reasonable return on a just and proper rate base," and that rates charged by the company were "unjust, unreasonable" and in violation of state statute.

Washington

Extravagance Denied

CHARGES of extravagance on the part of public utility districts of the state, made recently by two Bellingham officials of the International Brotherhood of Electrical Workers, were described as "purely political" by G. A. Peters of Chehalis, president of the Wash-

ington Utility District Commissioners Association.

"Since these expenditures have absolutely no connection with the districts' labor relations, which the union officials claim is the basis for their objection to public utility districts," Peters said, "their statement evidently is inspired by other reasons and from other sources."

The Bellingham men criticized public utility districts for their expenditures for legal and engineering services. Peters pointed out that the expenses are a matter of public record, and added that they are very modest "in comparison with the salaries paid for legal and engineering services by the private companies in a similar period."

He said the implication that PUD's have squandered nearly $2,000,000 and have not sold a penny's worth of electricity "is deliberately misleading. Actually, 15 districts have acquired approximately $15,000,000 worth of electric and water system properties."

Rate Cut Seen

ACTION for a survey of Centralia municipal power consumption preliminary to what will be practically an over-all adjustment and reduction of the city's light and power rates was disclosed recently by Mayor Ray W. Sprague.

The city head said the intention was to put the new rate structure into effect by the first of the year.

Several reasons make for financial safety in the proposed rate reductions, the mayor said. He pointed out one factor has been the rapid redemption of municipal light bonds. Interest on outstanding bonds was $8,887.49 in 1943, and for 1945 the amount will be only $2,362.50.

The last general decrease in power rates was in 1939, when a 20 per cent reduction was made.

Despite the rate drop, 1940 power revenue decreased only 10 per cent.

Wisconsin

WLB Upholds Ruling

THE National War Labor Board last month upheld a ruling of the sixth regional WLB at Chicago which denied approval of a proposed deferred wage payment plan on the basis that it constituted a hidden wage increase. Labor members dissented.

The plan was submitted jointly for approval by the Milwaukee Electric Railway & Transport Company and three affiliated companies and five unions representing 2,821 employees.

The proposed plan provided that for the year 1944, and that year only, a fund equal in amount to 6 per cent of the employee's earnings, including base wages, monthly fixed bonuses and overtime, but excluding special cash payments such as year-end bonuses, would be set aside by the employer in an irrevocable trust fund to be controlled and administered by an impartial trustee.

The accumulation of this fund together with increases from its investments were to be held in trust until sixty days after the trustee received a WLB ruling permitting distribution. In any event, no distribution was to have been made prior to January 1, 1945.

In denying a joint petition for review of the regional board's order, the NWLB acted in accordance with its policy that only those plans which provide for controlled distribution and which clearly possess pension features are approvable under wage stabilization. A fund dependent only upon the termination of the present stabilization program for distribution would, under these criteria, constitute merely a deferred wage or salary increase, the board held.

The board also found that the plan did not meet the requirements for cost deduction under § 165(a) of the Internal Revenue Code.

The case involved employees in the following Wisconsin companies and unions:

The Milwaukee Electric Railway & Transport Company, Milwaukee, and the United Association of Office, Sales, and Technical Employees, involving 133 employees.

The Wisconsin Michigan Power Company, Appleton, and the International Brotherhood of Electrical Workers, AFL, and Wisconsin Michigan Utility Operators' Union, involving 323 employees.

The Wisconsin Electric Power Company, Milwaukee, and the IBEW, the UAOSTE, the International Union of Operating Engineers, AFL, and the Amalgamated Association of Street, Electric Railway, and Motor Coach Employees of America, AFL, involving 2,224 employees.

The Wisconsin Gas & Electric Company, Racine, and IBEW, involving 141 employees.

Rate Reductions Totaled

WISCONSIN public utilities have made net rate reductions totaling more than $610,000 a year during the first nine months of 1944, the state public service commission announced last month.

Total reductions, the commission said, were $622,143, but were offset by increases of $10,779.

Of the reductions, $542,931 were made by electric utilities, $58,361 by telephone companies, $7,774 by water utilities, and $13,077 by gas companies.

The Latest Utility Rulings

Tax Questions Discussed in Decision On Rate Reduction

THE North Dakota commission, in prescribing electric and steam-heating rates following litigation, considered various tax claims as well as matters relating to depreciation, going value, return, and other rate-making elements. The case was before the commission after remand pursuant to decisions of the state supreme court. [See (1941) 71 ND 1, 39 PUR(NS) 219, 298 NW 423; (1944) — ND —, 53 PUR(NS) 143, 13 NW (2d) 779.]

A return of 6 per cent before excess profits taxes was held to be adequate and reasonable applied to a fair value rate base including materials and supplies, cash working capital, and going value. A separate allowance for going value was said to be speculative and conjectural. But the commission believed that the best interests of the company and its patrons required that there be an end to litigation, and, therefore, consistent with the mandate of the supreme court, the company was allowed its claim for going value in order to avoid further litigation.

An allocation of North Dakota property tax, based upon a consideration of both historical cost of physical property and departmental operating revenues, was approved. Property taxes on a transmission line partly situated in Minnesota, but used and useful in rendering public service in Fargo, were allocated to operation.

The company claimed an allowance for the Federal tax on energy based upon the amount actually paid on revenue received under electric rates prescribed by the commission in its order of March, 1938, plus an estimated liability for the tax on impounded electric funds receivable. Such an allowance, said the commission, would be warranted only if the company were to receive all impounded funds, but under its order the company would not receive any of the impounded electric funds, and hence no allowance should be made for this tax in addition to amounts actually incurred on revenues already received.

The Wisconsin Privilege Dividend Tax was not considered a proper expense of operation in the state of North Dakota. A deficiency assessment for state sales tax was also disallowed. The North Dakota corporate income tax as allocated was allowed.

The company's basis for allocation of Federal income tax was held to be improper because taxable income was used as a basis, while, in the determination of taxable income for each utility department, the company had assigned to the electric department considerable nonoperating income in the form of interest and dividends. Moreover, in the determination of taxable income in the Fargo division, the company had included impounded revenues.

The commission not only disapproved the company's method of allocating excess profits tax to the electric department, but ruled that this tax should not be shifted to consumers. Irrespective of whether regulatory agencies consider public utility earnings in excess of exemptions as "excess profits," the fact remained that Congress declared all such earnings taxable at 90 per cent to 95 per cent thereof. This is in no sense a normal tax. But, the commission added, there is nothing in the law which suggests that the earnings in excess of exemptions should remain unimpaired. If

an excess profits tax was involved, the commission continued, it would be necessary to assess consumers $10 to $20 in order to avoid a $1 reduction in net earnings. The imposition of such a burden on consumers was termed an "economic absurdity."

Annual depreciation allowance was fixed at 3 per cent, although the company claimed 4 per cent. The company was currently charging depreciation expense on its books at the approximate rate of 2.8 per cent. It was currently estimating annual depreciation expense for income tax purposes at 3.3 per cent. A company witness estimated that "actual" depreciation on electric property was currently accruing at the rate of only 2¼ per cent. The commission declared that annual depreciation and accrued depreciation in public utility property are but two phases of the same problem and they must be consistently treated. Since the commission was allowing annual depreciation expense in accordance with the straight-line method, it was said to be necessary to consider accrued depreciation in fixing a rate base. *Re Northern States Power Co. (Minn) (Case No. 3643).*

Power to End Alleged Discrimination by Fixing Retroactive Rates Denied

A PETITION by a town asking the Virginia commission to determine the difference between rates charged and rates alleged to be applicable, and to require reimbursement, was dismissed on the ground that the commission is without authority to fix retroactive rates. The commission reviewed the constitutional and statutory provisions under which it operates, stating that all its jurisdiction is conferred by either the Constitution or the statutes which are not in conflict with the Constitution.

The power company had established rates in May, 1939, applicable throughout its territory within the state. In July, 1941, the company reduced rates but made the reduced rate schedules applicable in all towns and cities "where the company owned a franchise, and in counties where the company had a road permit or franchise and in such other towns or cities in which the company thereafter acquired an electric franchise for a period of not less than twenty years."

These revised rate schedules were not intended to apply to or include the towns of Norton and Appalachia, because on the effective date of the schedules the company did not have a franchise in either of these towns. Subsequently the company made a further rate reduction, which revision likewise did not apply to these towns. Later the town of Norton granted a 20-year franchise, and the power rates immediately became effective there.

The town of Appalachia took the position that the applicability clauses of the new schedules were void and ineffective because they were calculated and intended to coerce the town councils and that they were violative of prohibitions against discrimination. The statute, it was pointed out, provides for filing rates and prohibits changes except after thirty days' notice unless a shorter time is prescribed by the commission. The commission may permit rates to go into effect without notice when the proposed revision effects no increases. It was plain that there were no increases in this case. The 1939 schedules still remained in effect for the town of Appalachia, although there had been reductions for other parts of the territory. Authorization to "fix and order substituted" new rates, the commission held, does not give authority to give retroactive effect to rates that may be substituted.

Referring to a requirement that public utilities shall render service and charge "uniformly therefor all persons

or corporations using such products under like conditions," the commission observed that the company was serving the people within Appalachia without a franchise. Its privilege to continue in business there was uncertain, while in other towns the right to operate was for a definite period. Where the right to operate was indefinite and hazardous, the company's status was clearly "unlike the conditions" existing where it was operating under a franchise.

In any event, however, the commission could do nothing about the past rates because it lacked authority to fix rates retroactively, and the town was not seeking an order prescribing rates for the future. *Town of Appalachia et al. v. Old Dominion Power Co. (Case No. 7895).*

Coöperative Denied Right to Oppose Extension by Electric Company

A COÖPERATIVE association, not complying with the rules and regulations of the Illinois commission pertaining to electric public utilities, was held by that commission to have no standing to participate in a case involving the granting of authority to an electric company to extend its distribution system. A motion by the company that the coöperative be barred from participation was granted after the commission considered the "very important and fundamental question" involved.

This question, said the commission, was whether an organization which by its own statements and representation holds itself out and proposes to furnish electric service generally in a territory in the state and is not specifically exempted (as are municipalities) from the operation of the Public Utilities Act, may invoke the aid of the commission and participate in a proceeding before it when that organization declines or fails to conduct itself as a public utility, and where the purpose of participation is to further that project of furnishing service without compliance. Certain fundamentals had been established. As stated by the commission:

> Chief among them is the fact that the coöperative is seeking to furnish electric service generally to the public in the territory here involved. It is mentioned that applications for so-called membership are required but the proceedings in this case indicate that general canvassing of the territory has been carried on a number of times and no one is excluded from applying for and receiving such so-called membership on the payment of an established fee. Such a requirement, as the commission views the matter, does not alter the fact that the coöperative is holding itself out to the public generally to render electric service in this territory.

Another question was considered, although, as stated by the commission, not directly related to the motion under consideration. This was the matter of dealings of the parties with the War Production Board and the actions of that board with respect to the exercise of its war emergency powers in the allocation of critical material for the building of lines which both the company and the coöperative had proposed to build in the territory. The service involved, said the commission, was not a temporary emergency service for the duration of the war, nor had it any interstate aspect. The organization first to build in the territory undoubtedly would continue to serve it long after the war. The commission continued:

> This is purely a local question and the laws of this state provide adequate means and procedures for dealing with it. Essential as are the war emergency powers of the Federal government and its above-mentioned agency, and as much as the commission desires to coöperate fully in the proper exercise of those powers, it must not be assumed that the decisions of the Federal agency made pursuant to those powers are to control or stand in substitution for the orders of this commission in local matters properly brought before it and within its jurisdiction.

Re Illinois Power Co. (32318).

Refund of Unauthorized Rates

THE Wisconsin commission, in granting an application by a municipal water plant for authority to increase its rates and to revise rules, considered the question of refunds to mutiple unit customers of the amount paid for service during the first two quarters of 1944 in excess of the amount that would have been paid under the lawful rates. The commission said:

> The state supreme court, in Kilbourn *v.* Southern Wisconsin Power Co. (1912) 149 Wis 168, 135 NW 499, held that unless a rate is filed and approved by the commission the utility cannot recover until it filed a rate. In the present case no rate for additional units of service was on file. Had the customer refused to pay, the utility would have been powerless to collect. We believe that the difference between the bill computed at the filed rates and the amount actually paid should be refunded to each customer, and so recommend.

Re Village of Waterloo (2-U-1982).

Elimination of Low-cost Rate Plan Of Electric Utility Approved

AN application by the Wisconsin Electric Power Company for commission review and modification of the company's "10-for-1 electric rate plan" and for approval of specific reductions in regular electric rates was granted by the Wisconsin commission. Originally this plan had been filed in 1935 in response to a commission order to show cause why a low-cost objective rate plan should not be filed.

A majority of the utilities in the state filed such plans, but this company chose to comply by filing the "10-for-1 plan," which differed in several important respects from the more conventional type of objective rate plans then under consideration. The commission had come to the conclusion that this plan, under existing circumstances, was unjustly discriminatory. Describing the plan, the commission said:

> Basically the 10-for-1 plan which was made available for residential and commercial lighting and rural customers provides that such customers are permitted to use at least 30 additional kilowatt hours, or twice as many kilowatt hours as were used during the corresponding month of the preceding year, at a cost not exceeding 10 per cent over the bill for the corresponding month of the preceding year. In addition, the plan, as presently applied, provides that the average cost per kilowatt hour used in a month shall not be less than one cent per kilowatt hour, and that energy used in excess of twice the consumption of the corresponding month of the preceding year (base month) will be billed at 2 cents net per kilowatt hour. A significant difference between the 10-for-1 plan and other low-cost rate plans then in effect was the absence of any objective rate.

This plan, introduced during the depression, had the primary purpose of encouraging customers to increase their use of service by making the cost of additional use less than under standard rates. Changes since the start of the war prompted the commission again to review the plan in the light of such changed conditions and ultimately led to the conclusion that the purposes for which the plan was filed had been fulfilled and that steps should be taken to provide for its elimination.

The commission authorized modifications providing for elimination of the plan to all new customers coming on the system after the date of the order; discontinuance of the right of any present customer to participate further in the plan, if he fails to participate at least once in any period of six consecutive months beginning with the service used after the meter readings taken during the calendar month of July, 1944; and application of the minimum net rate per kilowatt hour for customers participating under a provision for a minimum average rate per kilowatt hour of 1.25 cents effective for service used after the first regular meter reading after the first

of the month following the date of the order, and effective for a period of three months for each participating customer thereafter, with a minimum average rate of 1.5 cents per kilowatt hour for each customer participating under the plan for the next three months' period, a minimum average rate of 1.75 cents per kilowatt hour effective for each customer participating under the plan for the next three months' period, and a minimum average rate of 2 cents per kilowatt hour thereafter. *Re Wisconsin Electric Power Co. (2-U-1977).*

Jurisdiction Limited on Sale to Coöperative

THE Highland Utilities Company was granted authority by the Colorado commission to sell public utility properties to the Southeast Colorado Power Association, a nonprofit coöperative association financed and supervised by the Rural Electrification Administration. A motion to dismiss the application for authority was denied. The commission recognized its lack of authority to decide various questions, stating:

> The contention that purchase cannot be made by association because it is contrary to provisions of Rural Electrification Act of 1936, and that loan cannot legally be made by administrator to association for purchase of the properties involved, are questions we cannot settle. The managing officers of the association, after investigation and counsel with Rural Electrification Administration officials, authorized the purchase. The purchase was approved by the administrator. It has been approved by the Securities and Exchange Commission. The allotments (loans) have been made. If the REA, its administrator, or the association erred, question should be submitted by dissatisfied members of the association, if any there be, or other proper parties, to the courts for determination. Their remedy lies there. *Re* Highland Utilities Co. (Colo, 1943) 52 PUR(NS) 179 citing *Re* Missouri Electric Power Co. (Colo, 1943) 50 PUR(NS) 257. The same course should be followed by members as to the question of service to nonmembers and the operation of waterworks system at Eads and ice plant at Springfield.

As a basis for approving the transaction the commission noted that the transferee was financially able and qualified to take over and operate the property. At least there was no evidence to the contrary. Several times during past years complaints had been made by customers of the utility company as to rates and service. No customers of the utility company or members of the association appeared in person at the hearing to voice objections to the transfer. Some extensions in rural areas were contemplated in the event of transfer, which meant that farms without essential service and without hope of service from the company would be connected.

Generally speaking, said the commission, a property owner should be allowed to sell unless this would be detrimental to the public. In regard to the willingness of the association to assume the burden of serving the public as a utility, the commission said:

> We think the record shows that if it now lacks the power to operate a utility as a part of its business, or to operate as a utility, the association is willing to amend its charter and bylaws to meet objection made. We believe Mr. Ham made it clear that the association is willing to do anything that may be necessary, under the law, to permit it to carry on the Highland operation as a utility, and, in conducting said operation will recognize and submit to commission jurisdiction. We do not believe it is necessary at this time, and it probably is not within our jurisdiction in this proceeding (Natatorium Co. *v.* Erb, 34 Idaho 209, PUR 1922A 187, 200 Pac 209), to find that the association cannot operate as a coöperative and a utility at the same time, although there is some authority to the effect that by so doing it would become a utility as to all its operations.

Re Highland Utilities Co. (Application Nos. 1127-A, 1355-A, 1354-A et al. Decision No. 22666).

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*

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Points of Special Interest

Titles and Index

TITLES

INDEX

ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

Re Arkansas Power & Light Company

Docket No. 225
June 24, 1944

INVESTIGATION *of accounts and rates of electric company; accounting methods prescribed and rate reduction ordered.*

Accounting, § 4 — Jurisdiction of Commission — Accounting methods.

1. The Department has jurisdiction to prescribe the manner in which an intrastate public utility keeps its accounts, and the accounts so prescribed shall be the official corporate accounts of the company, p. 135.

Accounting, § 32 — Miscellaneous intangibles — Plant acquisition adjustments.

2. Costs originally incurred to accomplish the integration of utility properties acquired and to create a new and improved service should be included in Account 100.5—Electric Plant Acquisition Adjustments, rather than in Account 100.1—Electric Plant in Service (subdivision entitled Account 303 —Miscellaneous Intangible Plant), p. 142.

Accounting, § 29.1 — Organization cost incurred by predecessor company — Electric Plant Acquisition Adjustments.

3. Organization costs incurred by a predecessor company at the date of organization of the purchasing company, and for which the purchaser issued its securities, which were not recorded on its books as such should be charged to Account 301, a subaccount of Account 100.1—Electric Plant in Service, and credited to Account 100.5—Electric Plant Acquisition Adjustments, p. 143.

Accounting, § 24.1 — Payments to affiliate — Construction and supervision fees.

4. Supervision and construction fees paid to affiliates should be charged to Account 100.1—Electric Plant in Service to the extent that they are assignable to electric plant and to the extent that they do not represent profits to the affiliates, and the fees assignable to other utility properties should be charged to Account 108—Other Utility Plant, p. 143.

Accounting, § 32 — Land costs — Elimination of erroneous appraisal figure.

5. Land cost figures as shown, by deeds, in lieu of inaccurate appraisals made to determine the estimated original cost of land acquired by an electric company for use in its operations, should be substituted in accounts, with the resulting transfer of excess sums from Accounts 100.1—Electric Plant in Service and 100.4—Electric Plant Held for Future Use to Account 100.5—Electric Plant Acquisition Adjustments, p. 144.

Accounting, § 25 — Interest during construction.

6. A two-months' construction period as reflected by actual construction records should be substituted for a six-months' period estimated by a company acquiring utility property, with a resultant transfer of a certain sum from Account 100.1 to Account 100.5, where the construction was in piecemeal extensions and interest was actually charged for a period of not more than two months on a 6 per cent basis per annum, p. 144.

Accounting, § 25 — Interest during construction — Reasonableness of interest rate.

7. An estimated interest rate of 8 per cent for interest during construction, prior to 1927, was ordered to be reduced to 6½ per cent for that period so as to reflect more correctly the interest during construction, and a 6 per cent interest rate for construction subsequent to 1927 was deemed reasonable, and the resulting difference was transferred from Account 100.1 to Account 100.5, p. 144.

Accounting, § 12.1 — Legal and administrative expense — Adjustment of accounts.

8. A reduction of the over-all percentage for administrative and legal expenses from 3.76 per cent to 3 per cent was deemed reasonable, with the difference being transferred from Account 100.1 to Account 100.5, p. 145.

Intercorporate relations, § 14.2 — Profit to affiliate.

9. A public utility company may not obtain profits out of transactions with a corporation which it owns and controls, p. 151.

Accounting, § 24.1 — Purchase price — Intercompany profits.

10. Profits derived from the sale of utility properties to an affiliate may not be entered on the affiliate's books, which are records of cost, since such profits represent write-ups, p. 151.

Accounting, § 24.1 — Intercompany payments — Disposition of write-ups.

11. A write-up of the value of properties acquired from affiliates should be charged to Earned Surplus Account, or to Capital Surplus Account if a Capital Surplus Account is created for that purpose, p. 151.

Accounting, § 12.1 — Intangibles.

12. An item should not be stricken from a public utility's accounts merely because it is classified as an intangible asset, p. 153.

Accounting, § 32 — Plant acquisition adjustments — Write-off or amortization.

13. Items charged to Account 100.5—Electric Plant Acquisition Adjustments need not be charged off or amortized regardless of whether they represent value, p. 153.

Accounting, § 32 — Plant acquisition adjustments — Items representing value.

14. No amount charged to Account 100.5—Electric Plant Acquisition Adjustments should be eliminated if it is supported by value, p. 160.

Accounting, § 32 — Plant acquisition adjustments — Right to integrate property.

15. The cost of the right to integrate going businesses and properties and to acquire the gross businesses, customers, and other intangible values is an asset of such value, or such an increment to value, as to justify its inclusion in Account 100.5—Electric Plant Acquisition Adjustments p.160.

Accounting, § 32 — Amortization of increased values.

16. An amount representing the increase in structural value of existing physical properties over the original cost of such properties should be amortized in the same ratio and at the same time as the physcial property to which it is attached is depreciated or retired, p. 160.

Accounting, § 21 — Financing costs — Costs of predecessor company.

17. Bond discount, expense, premium and interest on bonds of predecessor companies should not be charged to Account 140—Unamortized Debt Discount and Expense, and such amounts should be transferred to Earned

Surplus or to Capital Surplus Account if a capital surplus is created for that purpose, p. 163.

Accounting, § 44 — Electric properties — Segregation of other properties.

18. A company acquiring electric, water, street railway, steam-heating, and ice properties should enter into Account 250—Reserve for Depreciation or Retirement of Electric Property, only that portion of the reserve applicable to its electric property, p. 163.

Valuation, § 69 — Rate base determination — Arm's-length profits.

19. Arm's-length profits made by a dedicating owner or any subsequent owner should be included in the original cost of the properties used as a rate base where the excess of investment over original cost was prudently made, resulted in public benefits, and represented functioning and existing values, p. 164.

Valuation, § 36 — Rate base determination — Original cost basis.

20. Original cost depreciated was not accepted as a rate base, where the excess of investment over original cost was prudently made, resulted in public benefits, had not been recouped by the investors, and represented existing and functioning values, p. 164.

Valuation, § 40 — Rate base determination — Reproduction cost.

21. Reproduction cost new less depreciation should not be given dominant consideration in the determination of a rate base, p. 167.

Valuation, § 98 — Accrued depreciation — Separability of maintenance and depreciation.

22. Maintenance and depreciation are not only interrelated but also inseparable for purposes of estimating accrued depreciation, and any method of separation is arbitrary and imperfect, p. 168.

Valuation, § 101 — Accrued depreciation — Accuracy of estimates.

23. Accrued depreciation cannot be accurately measured either by inspection or by any mathematical formulae which have for their fundamental components estimates derived from observation, p. 168.

Valuation, § 104 — Accrued depreciation estimates — Book reserves — Prudent investment theory.

24. In the application of the prudent investment standard for purposes of determining a rate base, actual depreciation is of no consequence except as it is reflected on the book reserve of the company, and since the book reserve is excluded in the determination of a prudent investment rate base, there is no injustice to the customers if the reserve is too high or to the investors if the reserve is too low, p. 168.

Valuation, § 36 — Rate base determination — Prudent investment theory.

25. The prudent investment standard for purposes of determining a rate base is founded on sound economic and legal principles with manifold advantages both to the public and to the utilities, p. 171.

Valuation, § 36 — Rate base determination — Prudent investment standard.

26. The prudent investment standard should be given major consideration in determining a rate base, p. 171.

Valuation, § 36 — Rate base determination — Prudent investment standard.

27. Prudency of investment for the purpose of determining a rate base should be weighed not only in the light of what might be prudent from the

standpoint of the stockholders, but also from the viewpoint of the customer, p. 171.

Valuation, § 36 — Rate base determination — Measures of value — Prudent investment.

28. The amount prudently invested was believed to be the most equitable measure for the determination of a rate base but the Department was careful to strip from the company's books and records every item representing write-ups, stock watering transactions, and other items not representing existing value contributing to the improved service to the public at reduced rates, p. 173.

Return, § 87 — Electric company.

29. A return of 6 per cent was deemed reasonable for an electric utility company, p. 174.

Expenses, § 57 — Interest on customer deposits.

30. Interest paid on customer deposits should be added to the return allowed an electric company, p. 174.

Depreciation, § 34 — Credits to reserve — Heating plant.

31. Net revenues derived from steam-heat operations were required to be credited to the depreciation reserve, where heating properties operated in connection with an electric plant were retained in the rate base, to the end that an amount sufficient to write off this property, when it becomes impracticable to operate, should be provided for, p. 176.

Depreciation, § 27 — Annual allowances — Maintenance and depreciation.

32. A depreciation allowance should be sufficient to cover both maintenance and depreciation for the future, p. 176.

Funds and reserves — Wartime reserves — Postwar planning.

33. Public interest requires an electric company to create a special reserve out of the excess gross operating revenues accruing to it during war to form a cushion against a decrease in revenues and a corresponding increase in rates during the postwar readjustment period, p. 178.

Rates, § 197 — Unit for rate making — Electric company — Steam-heat properties.

34. Steam-heat properties, together with the expenses and revenues, attributable thereto should be included in an electric system for rate-making purposes, where the steam-heat system is operated in connection with the electric system, where its operating costs are carried as electric operations and cannot be accurately separated, where the steam used is a product of the electric operations, where it has value and imposes a slight penalty on power generation, where the employees of the power plant maintain and operate the steam-heat facilities, where the allocation of operating and maintenance payrolls and expenses would be purely speculative, where the gross revenues from steam-heat operations are less than three-tenths of one per cent of the gross electric revenues, and where the determination of the value of steam used in the steam-heat operations would be arbitrary and intricate to the extent that its accuracy would be extremely doubtful, p. 179.

Valuation, § 288 — Working capital allowance — Prudent investment theory.

35. No separate allowance need be made for working capital where a rate base is determined by the prudent investment standard, p. 179.

RE ARKANSAS POWER & LIGHT CO.

Valuation, § 69.1 — Rate base determination — Payments to affiliates — Intercompany profits.

36. Fees paid to an affiliate in so far as they represent profits to the affiliate may not be included in a rate base, p. 180.

(MORRISON, Commissioner, concurs in separate opinion.)

APPEARANCES: Eugene R. Warren, Gordon E. Young, and S. I. Barber, for Arkansas Power & Light Company; R. B. McCulloch, for the Department; Leffel Gentry, for Intervener, H. K. Cochran; Carl E. Bailey, for intervening preferred stockholders.

By the DEPARTMENT:

Preliminary Statement

All of the electric rates and electric services of the Arkansas Power & Light Company are under investigation in these proceedings.

In these findings and order the Arkansas Power and Light Company will be referred to as the "respondent," the Electric Power & Light Corporation as "Electric," the National Power & Light Company as "National," the Federal Power Commission as "Commission," and the Department of Public Utilities of Arkansas as "Department."

Respondent was incorporated under the laws of Arkansas on October 2, 1926. At the time respondent was organized, the incorporators had developed comprehensive plans for the integration of the system which was acquired by respondent at the time of its organization. These plans included the acquisition of additional isolated systems in the state for the purpose of their integration into the system, and the interconnection of the Arkansas system with affiliated systems in Louisiana and Mississippi. The respondent was organized for the purpose of carrying out this plan of integration.

Under an agreement dated October 8, 1926, between respondent and a nominee of Electric, respondent acquired the physical properties of Consumers Ice and Light Company and Arkansas Power Company, and also the electric properties in several towns and cities in Arkansas. Respondent also acquired shares of preferred and common stock in Arkansas Central Power Company, Arkansas Light and Power Company, East Arkansas Power and Light Company, and The Pine Bluff Company. By agreement dated October 13, 1926, the physical properties of Arkansas Light and Power Company, The Pine Bluff Company, Arkansas Central Power Company, and East Arkansas Power and Light Company were transferred to respondent and the securities of those companies which respondent had acquired under the agreement of October 8, 1926 were surrendered and canceled. All of the foregoing properties were acquired by respondent from Electric, or its nominees. As the result of the foregoing transfers, respondent acquired, in addition to electric property, certain water, street railway, steam heating, and ice properties which had been owned and operated by predecessor companies. Since October, 1926, respondent has acquired

or constructed additional electric and other property.

All of respondent's electric property is located within the state of Arkansas. Its electric production plant as of December 31, 1943, had an aggregate installed capacity of approximately 140,000 kilowatts, and consisted of three hydroelectric stations, four steam stations, and eight internal combustion stations.

Respondent purchases a considerable amount of its power supply from integrated affiliates outside the state of Arkansas. It serves approximately 325 communities in Arkansas, including Little Rock, Pine Bluff, Stuttgart, El Dorado, Camden, Russellville, Malvern, Newport, Morrilton, and Arkadelphia. The electric system of respondent is interconnected by transmission and distribution lines, and substations, and serves the major part of the state of Arkansas.

While respondent has been subject to the jurisdiction of the Department from April 2, 1935 (the date of approval of Act 324 of the General Assembly of Arkansas of 1935 creating the Department), the Department on its own motion, by an order of July 2, 1937, actually took, and has ever since retained, jurisdiction of the respondent. The purpose of the order was to determine the reasonableness and lawfulness of all rates, rules, practices, regulations, and contracts applicable to its electric service in Arkansas; and, if any thereof was found to be unreasonable, unjust, or otherwise unlawful, to determine and fix reasonable, lawful, just rates, rules, regulations, and contracts to be charged, collected, and observed.

Since the issuance of the order of July 2, 1937, the necessary investigations of the property, records, accounts, and affairs of the respondent have been under way. From time to time the engineering and accounting staffs of the Department engaged in the work have filed progress reports. Whenever the information contained in these reports appeared to justify a rate reduction or disclosed any unjust or otherwise unlawful rates or practices, the Department, without awaiting final conclusion of the investigation, issued appropriate interim orders directing the filing of schedules reducing rates and correcting any unjust or unlawful practices.

This course has resulted in rate reductions or refunds to customers aggregating $1,675,000; the last such order, a refund order, was issued November 27, 1942, 46 PUR(NS) 226. Under it, the respondent refunded to its customers $625,000 of its gross electric revenues for the year 1942. These orders have resulted in cumulative savings to the public of $5,687,429.

The staff's reports filed in 1942 indicated that by reason of the location of war industries in its service area, and the influx of labor incident thereto, respondent would receive in that year, and probably for the remainder of the war period, what was considered to be excessive revenues.

Notwithstanding these circumstances, the Department was loath to proceed with a formal rate investigation. This position was influenced, to a great extent, by the uncertainties as to the duration of the war and the effect the war's ending might have upon respondent's revenue. This position was also influenced, to some

extent, by the loss of trained personnel on the part of both the Department and the respondent to the armed forces.

These circumstances caused the Department to inaugurate the policy of requiring the respondent, and the other utilities operating in the state, to refund excessive revenues, rather than to force rate reductions.

The $625,000 refund was made pursuant to this policy, and the Department had no reason to believe that the respondent would not continue to coöperate with the Department in its refund policy. However, on October 7, 1943, the respondent formally notified the Department that it would oppose and contest all further orders directing a refund of any of its revenues to its customers. By reason of respondent's refusal to continue its coöperation with the refund policy of the Department, it became necessary for the Department to institute and conduct this hearing to determine the value of respondent's electric property, fix a just and reasonable rate of return thereon, and to issue such orders as the facts would justify.

Jurisdiction of This Department

[1] This Department was created by Act No. 324 of the Acts of 1935, approved April 2, 1935. It is vested with power and jurisdiction to regulate all public utilities doing business in Arkansas with power to prescribe reasonable, uniform rates and practices. The act, § 19(1), expressly provides that the Department, upon its own motion, shall, upon reasonable notice after a hearing, "find and fix just, reasonable, and sufficient rates to be thereafter observed, and enforced and demanded by any public utility." The Department is charged with the duty to "ascertain and fix the value of the whole or any part of the property of any public utility."

Respondent is an Arkansas corporation and is engaged exclusively in intrastate business. The Department has jurisdiction to "establish a uniform system of accounts" to be kept by respondent and to "prescribe the manner in which such accounts shall be kept." The Department, therefore, finds that it has jurisdiction to prescribe the manner in which the respondent keeps its corporate books, accounts, and records, and that the books, records, and accounts so prescribed by this Department shall be the official corporate accounts and records of the company. Its jurisdiction over respondent and its electric and other operations is complete and comprehensive and the Department is the only regulatory authority having such all-inclusive jurisdiction.

The Department is given power to supervise, regulate, restrict, and control the issuance of stocks, bonds, notes, and other evidence of indebtedness by all public utilities doing business in Arkansas.

The act (§ 61) expressly provides that "every public utility, and every person or corporation, shall obey and comply with each and every requirement of the act and of every order, decision, direction, rule, or regulation made or prescribed by the Department in all matters herein specified, or any other matter in any way relating to or affecting the business of any public utility."

The foregoing powers of the Department were sustained by the

Arkansas supreme court in Department of Public Utilities v. Arkansas Louisiana Gas Co. (1940) 200 Ark 983, 36 PUR(NS) 41, 142 SW(2d) 213.

The Proceedings

The Department's Show Cause Order

On November 10, 1943, the Department issued its order directing that a hearing be held to establish the fair and reasonable rate base and rate of return thereon with respect to respondent's electric property used and useful in the public service and to fix reasonable rates to be thereafter charged by respondent. The respondent was directed to show cause why the original cost of its electric property, less accrued depreciation, should not be established as its electric rate base and also why its books and accounts should not be adjusted to conform to the Department's Uniform System of Accounts. Respondent was further ordered to show cause why it should not be required to write out of its accounts amounts which do not reflect actual value. The respondent was also ordered to show cause why any rate reduction which might be found justified by the evidence should not be made effective as of January 1, 1943.

The Company's Response

The response filed by the company alleges, in substance, that the rates now being charged by respondent are just and reasonable and that the Department is without power to make a retroactive rate reduction. It denies that "original cost" of respondent's electric property, less accrued depreciation, represents the fair value thereof, and denies that "original cost," less accrued depreciation, should be established as the rate base. Respondent alleges that all items are carried in its books at not less than the present fair value and that the Department is without power to require respondent to write any amounts out of its books.

The Interventions

An intervention was filed by Mr. H. K. Cochran for himself and other consumers of the Arkansas Power and Light Company similarly situated. An intervention was also filed by certain owners of preferred stock of the Arkansas Power and Light Company. The questions raised by these interventions are substantially the same as the issues raised by the Department's order and the company's response thereto and will be disposed of in connection with these findings.

The Hearings

Hearings were begun December 7, 1943; and, with the exception of a brief period during the latter part of December, the taking of testimony continued with but little interruption until May 10, 1944. Thereupon time was given to the parties within which to prepare and file briefs in the case. Oral arguments were heard by the Department June 22, 1944. Many witnesses testified and the record is voluminous, consisting of 4,321 pages of testimony and, in addition, 159 exhibits.

Issues

While this is primarily a rate case involving the establishment of a rate base, a fair rate of return, the scope of the present investigation was made much broader.

The respondent had not cleared its

plant accounts of known, numerous, erroneous and inflationary entries, nor had it brought its books into conformity with the Department's Uniform System of Accounts. The Department had not determined the original cost of the respondent's property nor allocated that, or any other cost, to or between its several utility operations. Since these matters are relevant to the establishment of fair and just rates, all of them were brought within the scope of the Department's show cause order. This order and the response thereto present the issues, as follow:

1. What is the original cost of respondent's electric property as that term is defined in the Department's Uniform System of Accounts?

2. Should respondent be ordered to adjust its plant and other accounts to comply with the requirements of the Department's Uniform Sysem of Accounts?

3. What disposition should be made of the amounts found to be properly includible in Account 100.5?

4. How should the amount found to be properly includible in Account 107—Electric Plant Adjustments, be disposed of?

5. Should the original cost of respondent's electric property, less accrued depreciation, be fixed as its rate base; and, if not, how should such rate base be determined and what is the amount thereof?

6. Are the rates now charged and demanded by respondent unjust and unreasonable; and, if so, what are the just and reasonable rates which should be charged by respondent?

7. Should the new schedules be made retroactive to January 1, 1943?

Under this order it is the duty of the Department to find and fix the original cost of respondent's electric properties; the actual cost thereof to the respondent and its affiliates (sometimes referred to as "system cost"); the amount at which its electric properties have been recorded; to order and direct the making of any entries necessary to bring its books of account into conformity with the Department's Uniform System of Accounts; and to find and fix just, reasonable, and sufficient rates for respondent's electric service.

Reclassification of Accounts

At the time respondent took over the property for which it was organized to acquire and integrate, it did not attempt to make any segregation upon its books of its plant accounts between electric, water, ice, and street railway. The reputed costs of these various utility properties and of properties acquired subsequent to its organization were entered in lump-sum amounts. When it constructed properties, their cost of construction was entered in the detailed accounts, according to the system of accounts then followed.

Under the Department's Uniform System of Accounts, the principal balance sheet account for Electric Plant is Account 100. This system, as well as that of the Federal Power Commission, provides six subaccounts of Account 100 as follow:

100.1—Electric Plant in Service

100.2—Electric Plant Leased to Others

100.3—Construction Work in Progress

100.4—Electric Plant Held for Future Use

100.5—Electric Plant Acquisition Adjustments

100.6—Electric Plant in Process of Reclassification

The system further provides for one other electric account, Account 107—Electric Plant Adjustments, and also, for Account 108—Other Utility Plant.

These several subaccounts were designed to show the following: 100.1 to 100.4 inclusive—the original cost of electric plant acquired or constructed; 100.5—the difference between original cost and the cost to utility, or its affiliates, of electric plant acquired as a result of arm's-length transactions; 100.6—the amount of plant account or utility property in process of reclassification; 107—the amount by which the recorded cost of electric plant at the effective date of the system of accounts differs from the cost of such plant to the utility, or its affiliates, which is not recorded in any of the subaccounts of Account 100 or Account 108.

In May, 1940, the respondent, pursuant to Electric Plant Instruction 2-D of the Uniform System of Accounts prescribed by the Federal Power Commission and an order of May 11, 1937, issued by that Commission, filed a report of its studies relative to the reclassification of its electric plant accounts as of January 1, 1937. A copy of this report has been introduced in this proceeding as Exhibit #1.

The staff of the Federal Power Commission began an investigation of the respondent's report in May, 1941. The Department, at the invitation of the Commission, assigned members of its technical staff to that investigation, and at least one member of the Department's staff remained on that assignment throughout the investigation. This examination was completed by June, 1942, and a copy of the tentative draft of the proposed joint report was furnished the Department's chief accountant for examination and criticism. There was considerable correspondence, and at least one conference, between the staffs of the Commission and the Department. As a result of this conference, the chief accountant of the Department declined to sign the staff report as a joint report, but later, furnished the chief of the Commission's bureau of accounts, finance, and rates, a letter, in which he stated that he was in agreement with the report as a whole but would neither approve nor disapprove the individual items of adjustment or their inclusion in the particular account to which they were assigned. A copy of the staff report of the Commission has been introduced in this record as Exhibit #105.

On June 15, 1943, the Commission, under its Docket No. IT-5829, issued an order directing the respondent, under oath, to show cause, if any it had, within ninety days from that date, why the Commission should not, by order, find, determine, and direct that certain adjusting entries be made in the respondent's accounts. In September, 1943, the respondent filed its response to the Commission's order of June 15, 1943. This response, duly verified, has been introduced in this proceeding as Exhibit #2. Exhibits #1, #2, and #105, together with supplementary exhibits, and the testimony of witnesses in support of such

exhibits, constitute the principal evidence as to the original cost of respondent's electric property. Exhibit #1 is an original cost study from an engineering approach, and is, substantially, an original cost appraisal. This exhibit will hereafter be referred to as the "Engineering Study." Exhibit #105 is, in substance, a rejection by the staff of the Federal Power Commission of this engineering approach and will be hereafter referred to as the "Staff Report." Exhibit #2 is an original cost study made from an accounting approach. However, it is replete with engineering appraisals not considered in Exhibit #1. Exhibit #2 will hereafter be referred to as the "Accounting Study."

Original Cost

Original cost is defined by the Department in its Uniform System of Accounts for Electric Utilities as the cost of electric plant to the person first devoting it to public service. This definition is identical with the definition of original cost adopted by the Federal Power Commission in its Uniform System of Accounts for Public Utilities and Licensees. It is also identical with the definition in the Uniform System of Accounts for Electric Utilities recommended by the National Association of Railroads and Utilities Commissioners. The term "original cost" has been discussed extensively in this record by several witnesses. We use the term "original cost" as defined by the Department's system of accounts.

Since it is the duty of the Department to find and fix the original cost of the respondent's properties, it is necessary to examine fully these studies together with the other relevant evidence.

Engineering Study of Original Cost

The Engineering Study was prepared by the respondent's staff and is, essentially, an original cost appraisal of the respondent's electric property as of December 31, 1936. Estimates of original cost included therein were made by valuation engineers. The record discloses that this appraisal was based on a complete field inventory of respondent's property. Respondent's witnesses testified that this inventory was unusually accurate. The record in this case shows that the inventory was checked by the staff of this Department and found to be substantially correct. It appears that for the property constructed by the respondent, costs as recorded by it, with corrections of construction overheads and interest during construction, were used. For properties acquired by the respondent as operating units or systems, the original cost was estimated by using material and labor costs as of the nearest determinable date of original construction, with estimated construction overheads applied thereto. No effort was made in this exhibit, however, to determine the original cost of properties acquired as operating units or systems, by separate operating units or systems; nor was there any effort made to determine the difference, if any, between the original cost of such operating units or systems and the cost to the respondent by such operating units or systems. No effort was made in this exhibit to determine the cost of its electric property to the respondent or its affiliates, as required by the Depart-

ment's system of accounts. To the extent that these requirements of the Department's system of accounts were not met by the Engineering Study, the Department must look elsewhere in order to make a determination of these amounts.

As stated, Exhibit #1 is an engineering estimate of the original cost of respondent's electric property as of December 31, 1936, and a classification of those costs to primary plant accounts, which classification is in accordance with the Department's system of accounts. The original cost of the electric property, as of December 31, 1943, has been determined by taking the amount shown as the original cost as of December 31, 1936, adding thereto the cost of construction of electric property during the period from January 1, 1937, to December 31, 1943, inclusive, and deducting therefrom costs included therein for electric property retired during that same period of time. Obviously, a detailed knowledge of the actual physical units of property is necessary in any attempt to classify the cost of that property by primary plant accounts. The reclassification of the respondent's electric property and the inclusion of the correct amounts in the primary plant accounts, as required by the Department's Uniform System of Accounts, makes necessary such detailed knowledge. The Engineering Study meets the requirements of the Department in that respect since the costs were built up from a detailed field inventory of the property.

The respondent insists that, in so far as the Engineering Study and supplementary exhibits, bringing amounts as of January 1, 1937, up to December 31, 1943, apply to the original cost of its electric property, these exhibits show a reasonably accurate determination; and that the method used is the only method available that will furnish a reasonable estimate.

The original cost of the respondent's electric properties at December 31, 1943, as shown by the Engineering Study, subsequently corrected by additional exhibits, is as follows:

Account 100.1—Electric Plant in Service	$46,115,134.86
Account 100.3—Construction Work in Progress	405,426.54
Account 100.4—Electric Plant Held for Future Use	150,117.58
Total	$46,670,678.98

While the Department does not disagree with the method employed by respondent in making the original cost determination, it is of the opinion and finds that these amounts do not correctly represent the original cost of the respondent's electric property. Amounts are included therein which the evidence shows are properly includible in Account 100.5—Electric Plant Acquisition Adjustment. Amounts are also included therein which represent the capitalized portion of certain fees paid to affiliates. These amounts will be discussed later.

The Staff Report is a report on the reclassification and original cost studies of the electric plant of the respondent, as of January 1, 1937, which report was prepared by the staff of the Commission and shows the results of that staff's examination of the studies of the respondent, which have been designated in these proceedings as the Engineering Study.

The Staff Report rejected the respondent's original cost and reclassi-

fication studies as not meeting the requirements of the Commission's system of accounts and its order of May 11, 1937. This report establishes $1,108,440.24 as being includible in Account 100.5—Electric Plant Acquisition Adjustments, and $16,610,196.85 as being includible in Account 107—Electric Plant Adjustments. The requirements for inclusion of items in these two accounts, as provided by the Department's Uniform System of Accounts, are substantially the same as for the Commission's Uniform System of Accounts, and, therefore, no distinction between the two systems of accounts will be made hereafter in this opinion when referring to Accounts 100.5 and 107. As mentioned before, the Department's chief accountant declined to concur with the details of the Commission's Staff Report, even though members of his staff were assigned to the joint investigation. He did, however, agree that the total amount assignable to Accounts 100.5 and 107 was approximately correct but did not agree as to the segregation of the total amount as between the two accounts.

The evidence presented in this case substantiates the fact that the amount properly assignable to Account 100.5 as well as the amount includible in Account 107 differ substantially from the amounts shown in the Staff Report of the Commission.

After giving full consideration to all of the facts and circumstances, the Department finds that the Engineering Study, as adjusted by subsequent exhibits and testimony, is more reliable than the Accounting Study as a basis for the reasonable determination of the original cost of the respondent's electric property.

Accounting Study of Original Cost

The Accounting Study is the Arkansas Power & Light Company's response to the Commission's order of June 15, 1943, to show cause under its Docket No. IT–5829. An effort was made in this response (1) to establish an original cost ceiling from the books and records now available and (2) to determine the acquisition cost of the electric property to the respondent or its affiliates. Appendix 1 to the Accounting Study shows the details by which the respondent attempted to establish an original cost ceiling, and Exhibit A to Appendix 1 to the Accounting Study shows, in detail, the computations by which the cost to the respondent or its affiliates was established.

The preponderance of testimony in this proceeding is to the effect that an accounting study which will furnish a reasonably accurate original cost ceiling cannot be made, unless adequate books and records are available. The evidence shows that, in the event an acceptable original cost ceiling is established by such a method, no classification of property by primary plant accounts can be made therefrom. It is necessary, therefore, to resort to an inventory and appraisal of the properties, where amounts assignable to the detailed plant accounts have been determined, and then allocate the original cost ceiling to each plant account on the basis that the amount in each account bears to the total appraisal of the properties. We agree that, if all books and records pertinent to the construction and retirement of electric properties are avail-

able, an acceptable original cost ceiling can be established. These conditions do not prevail in this case. The record shows that complete information is available as to the cost of construction by the respondent; but that the amounts at which electric property, both acquired and constructed, were retired is principally a matter of conjecture. As to the construction costs and retirement policies of predecessor companies of the respondent, the evidence shows that practically no records of any kind are now available and that even the Accounting Study is, in fact, principally an engineering estimate.

As mentioned above, Exhibit A to Appendix 1 to the Accounting Study shows the determination of the acquisition cost of all the properties to the respondent or its affiliates. This acquisition cost will hereinafter be referred to as the "system cost" of the respondent's properties. This study and subsequent exhibits and explanations furnish ample information to the Department for its use in determining the system cost of the respondent's properties, the amount of "write-up" carried in the respondent's books of account, and, along with the original cost information contained in the Engineering Study, the difference between the original cost of the respondent's electric property and the system cost thereof.

The Department also finds that the Accounting Study, as adjusted by subsequent exhibits and testimony, furnishes the only available basis for a determination of the "system cost" of the respondent's total properties, and the Department adopts this study, subject to further adjustments or corrections, as will be discussed later, as the basis for determination of system cost.

Finding of Original Cost

Exhibit #36, which is supplementary to the Engineering Study, shows the original cost of electric plant as of December 31, 1943, as follows:

100.1—Electric Plant in Service	$50,939,975.88
100.3—Construction Work in Progress	405,426.54
100.4—Electric Plant Held for Future Use	150,117.58
Total Original Cost of Electric Plant	$51,495,520.00

The following adjustments to the above amounts are necessary in order to estimate correctly the original cost of the respondent's electric properties:

(a) *Account 303—Miscellaneous Intangible Plant*

[2] This adjustment involves the amount of $4,852,102.89, which has been included in Account 303—Miscellaneous Intangible Plant, under Account 100.1—Electric Plant in Service. This amount is the adjusted balance of $5,264,897.16, which was originally assigned to this account in the Engineering Study. The respondent contended that this amount represents costs originally incurred by it which were essential to accomplishing the planned integration of the property, just as the new transmission lines and substations connecting the property were essential from the standpoint of the physical development of the integrated system, so that the cost was an original cost. It further contended that the object of the investment and the result were the creation of a new and improved service instrumentality

and that the object of the expenditure, and the result, are entirely distinct from a plan contemplating merely the acquisition and continued operation of properties in the manner in which they were being operated prior to the integration. It contended that, in view of the fact that the expenditures represent the original costs of intangible property values created in developing an integrated system and are necessary and valuable as component parts of such system, it is properly classified in Account 303—Miscellaneous Intangible Plant, under Account 100.1—Electric Plant in Service.

The testimony of the respondent's witnesses is persuasive as to the prudency of and the necessity for such expenditures, made in arm's-length transactions, and should not be dismissed from consideration in a rate base determination. The Department's Uniform System of Accounts provides that:

"Account 100.5 is designed to show the difference between the cost of the utility of electric plant acquired as operating units or systems by purchase, merger, consolidation, liquidation, or otherwise, and the original cost of the plant, due consideration being given to any depreciation or amortization recorded by the accounting utility at the date of acquisition."

The foregoing provision of its Uniform System of Accounts provides that all amounts expended for the acquisition of operating units of property above the original cost thereof shall be included in Account 100.5—Electric Plant Acquisition Adjustments, the Department finds that the remaining amount of $4,852,102.89, representing miscellaneous intangibles, is properly includible in Account 100.5, and that Account 100.1 should be reduced by that amount.

(b) *Organization Expenses*

[3] This adjustment involves $27,-261.87, representing organization cost actually incurred by Electric at the date of organization of the respondent for which respondent issued its securities but which was not recorded upon its books as such. The Department finds that this item should be charged to Account 301, a subaccount of Account 100.1, and credited to Account 100.5.

(c) *Fees to Affiliate*

[4] To Account 100.1 there is charged an amount of $78,105.73 representing that portion of an amount of $857,016.03 The amount of $857,-016.03 represents amounts paid to affiliates of respondent for supervision and construction fees and remaining in respondent's plant account as of December 31, 1943. The amount of profits realized by the affiliates from these fees should be determined (and the record is not now sufficient for that determination) and charged to Account 107. Such portion of the item of $857.016.03, as, upon final analysis, shall be determined not to have represented profit to affiliates shall be charged to plant and the amount thereof assignable to electric plant shall be charged to Account 100.1 and the amount assignable to other utility properties shall be charged to Account 108.

The Department finds, pending final determination, that the total amount of $857,016.03 shall be charged to Account 100.6—Electric Plant in Process of Reclassification, and $788,-

105.73 shall be credited to Account 100.1, and $68,910.30 shall be credited to Account 108. The amounts, if any, which upon analysis are found to be chargeable to Accounts 100.1, 107, and 108, respectively, will increase the amounts hereinafter fixed in said accounts.

(d) *Land Costs*

[5] The respondent had appraisals made to determine the estimated original cost of various lands it had acquired for use in electric operations, in those cases where the respondent's records did not reflect the original cost. In the case of the Little Rock Steam Plant site, the site of Little Rock Substation #1, and the site of the Russellville Hydro-Electric Plant, these appraisals were far from accurate. The deeds, as reflected from the county records, are the best evidence of the correct original cost. Substituting these correct cost figures for the corresponding appraisal figures used by the respondent results in a transfer of $33,700 from Account 100.1 to Account 100.5 and a transfer of $6,300 from Account 100.4 to Account 100.5.

(e) *Interest during Construction on Mass Distribution Property*

[6] The respondent has estimated that an average period of construction of six months was correct in computing interest during construction for mass distribution property. The record reveals that the majority of this construction was in very small, piecemeal extensions and that the analysis of construction records for 1928 and 1929 stated by respondent's witness to be typical and used in the development of the Engineering Study, together with an analysis of the construction records for 1937 through 1941, reflects that interest was actually charged for a period of not more than two months on a 6 per cent basis per annum. Substituting a two-months' construction period, as reflected by the actual construction records, in place of the six-months' period estimated by the respondent, results in a transfer of $90,000 from Account 100.1 to Account 100.5.

(f) *Interest during Construction—Prior to 1927*

[7] The respondent estimated that the rate of interest to be charged for "Interest during Construction" should be 6 per cent for 1927 and subsequent periods, and 8 per cent for the period prior to that time. The Department finds that the 6 per cent rate for the period subsequent to 1927 is reasonable. The respondent offered little, if any, proof to establish the 8 per cent rate estimated for the period prior to 1927. While it is probable that the cost of construction money for this particular company's predecessors was somewhat higher prior to 1927, it is equally probable that the actual cost of money was considerably less than 8 per cent. The record further shows that the actual interest shown on the respondent's books for the period subsequent to 1927 does not truly reflect the actual interest expense incurred. In view of these facts, the Department finds that the interest rate of 8 per cent should be reduced to 6½ per cent for the period prior to 1927 so as to more correctly reflect the "Interest during Construction." This adjustment transfers $82,500 from Account 100.1 to Account 100.5.

(g) *Omissions and Contingencies—Steam Plant Accounts*

The respondent has estimated an amount for the item of "Omissions and Contingencies" in Accounts #312, Boiler Plant Equipment, #313, Engines and Engine Driven Generators, and #314, Turbo-Generator Units. Through some misinterpretation of instructions on the part of the respondent's staff, this estimate was admittedly in excess of what was actually intended. The adjustment necessary to correct this misunderstanding transfers $44,000 from Account 100.1 to Account 100.5.

(h) *Administrative and Legal Expense—Prior to 1927*

[8] The respondent has estimated a percentage amount for "Administrative and Legal Expense" and that percentage varies by years. For the period from 1927 to 1937, this percentage was arrived at through an analysis of the respondent's construction records. This analysis did not eliminate the Electric Bond and Share Company fee discussed and eliminated elsewhere in this order. The record shows that for the period prior to 1927, this percentage is purely an estimate and based, in part, if not wholly, upon the percentage obtained in the subsequent years. The elimination of the Electric Bond and Share fee from the analysis of "Administrative and Legal Expense" for the period from 1927 to 1937, would substantially reduce the percentages arrived at for that period and, in turn, should be reflected in the estimate for prior years. The Department therefore finds that the weighted average percentage of 3.76 per cent used by the company for the period prior to 1927 should be reduced to 3 per cent. This adjustment, together with the elimination of the proper portion of the Electric Bond and Share fee, will result in an over-all percentage for administrative and legal expense, which the Department believes is not unreasonable. This adjustment transfers $90,000 from Account 100.1 to Account 100.5.

Conclusions As to Original Cost

After giving effect to the foregoing adjustments, the Department finds that the amounts properly includible in Accounts 100.1, 100.3, and 100.4, as of December 31, 1943, are as follow:

100.1—Electric Plant in Service	$44,986,829.13
100.3—Construction Work in Progress	405,426.54
100.4—Electric Plant Held for Future Use	143,817.58
Total Original Cost of Electric Plant	$45,536,073.25

As the result of careful consideration of the record in this proceeding, the Department finds that the original cost of the respondent's electric property, exclusive of amounts which may be assignable to Account 100.1 after further analyses of the amount assigned by the Department to Account 100.6, is $45,536,073.25 subdivided by accounts as shown above.

Adjustment of Plant Account System Cost

As mentioned previously, Exhibit A to Appendix 1 to the Accounting Study with subsequent exhibits and testimony which makes certain corrections to amounts contained therein, shows a determination of the cost of all of the respondent's properties to it or to its affiliates.

This determination of system cost is required by the Department's Uniform System of Accounts under balance sheet instructions pertaining to Account 100.5. These exhibits show the system cost of all the respondent's properties as of December 31, 1936, to be $57,875,251.66.

Included in the system cost determination are items which merit some discussion. One such item is an amount of $3,486,678.38, representing the amount paid by Electric to National for the property of The Arkansas Central Power Company. The staff has caused to be brought into this record all available facts which might be a basis for holding that this was an intercompany transaction, resulting in a profit of approximately $1,000,000 to National. The assumption that a profit was made by National on the transaction is based on a cost assumed by an examiner of the Federal Trade Commission in his report to that Commission. The Federal Trade Commission examiner's report has been introduced into this record by the Department's staff as Exhibit #146. The record discloses that National acquired the Arkansas Central Power Company in an arm's-length transaction, along with property in Tennessee, Alabama, and Texas, for a lump sum price. The record also shows that the Arkansas Central Power Company's properties were disposed of by National by a sale to Electric some two years after its acquisition and before the disposition of any of the other properties acquired along with them. The evidence discloses that the sale by National to Electric was made on the basis of a determination of a reasonable price as determined by a committee of directors from each of the two companies and that this price was the estimated cost to National.

The evidence is undisputed that when a lump sum purchase of several properties is made, the measure of cost of each of the properties lies within the judgment of the purchaser. Mr. Kleinman, a man of wide experience in both regulatory and accounting fields, testified that ". . . the joint-cost principles leaves the allocation entirely in the hands of the company, but when it is recorded we, as regulatory Commission accountants, could never have criticized their recording as being incorrect or inequitable at the time they made it and they have no right to impeach it now."

The evidence also discloses that since that sale, or for approximately nineteen years, National has consistently adhered to that determination of cost of the Arkansas Central Power Company properties. The distribution of cost, as shown by Exhibit #146, is, admittedly, based on certain assumptions of the examiner of the Federal Trade Commission and represents estimates as to the cost to National for the properties in the lump-sum transaction. Therefore, all pertinent evidence available pertaining to this acquisition has been considered by the Department, and it finds that this evidence is merely suggestive and does not afford sufficient ground for holding that there was any intercompany profit on the transaction and that the amount of $3,486,678.38 paid by Electric to National is the system cost of the properties of the Arkansas Central Power Company.

Another item included in the sys-

tem cost of $57,875,251.66 that deserves some comment is the item of $4,325,109.05, representing the estimated cost of properties in Arkansas acquired by Electric from Southern Power & Light Company in an arm's-length transaction for a lump sum, whereby properties in Arkansas, Louisiana, and Mississippi were involved. The record shows that the distribution of the lump sum price paid by Electric was examined and approved by the chief accountant of the Department and that this distribution has been accepted and approved by other regulatory Commissions having jurisdiction over the distribution. The Department, therefore, finds, after reviewing all evidence, that the amount of $4,325,109.05 represents the system cost of properties in Arkansas acquired by Electric from Southern in that particular transaction.

Some comparatively small amounts originally included in the system cost study by the respondent were questioned by the Department's staff and that respondent's witnesses are in substantial agreement with the staff. These amounts have been excluded from the system cost by the Department.

The Department finds that the system cost of all respondent's plant at December 31, 1936, was $57,875,-251.66.

Excess System Cost over Original Cost of All Plant—December 31, 1936

As of December 31, 1936, the original cost of the respondent's properties, as shown by the Engineering Study, as adjusted, and Appendix 1 to Exhibit 2, and Exhibit #84, is as follows:

Electric Plant	$36,471,266.44
Water Plant	3,791,638.01
Gas Plant	1,275,217.91
Railway Plant	3,207,239.47
Motor Coach Plant	111,006.53
Ice Plant	1,037,863.30
Steam Heat Plant	289,474.63
Other Physical Property	170,354.33
	$46,354,060.62

This amount deducted from the system cost, $57,875,251.66, as of December 31, 1936, leaves a balance of $11,521,191.04 as the excess of system cost over original cost as of that date. For purposes of comparison we have assigned this total amount to Account 100.5.

Excess Recorded Cost over System Cost of All Plant—December 31, 1936

The record shows that the Plant Account as recorded as of December 31, 1936, was $65,566,815.26. As of the same date the system cost was $57,-875,251.66.

The difference between these two amounts of $7,691,563.60 is assignable to Account 107—Electric Plant Adjustments. This total of $7,691,-563.60, frequently referred to as "write-ups," is composed of the following items:

Excess Recorded Cost over System Cost	$2,678,413.12
Unrecorded Retirements	605,889.64
Unamortized Debt Discount and Expense	3,947,813.92
Discount on Capital Stock	75,814.12
Capital Stock Expense	254,442.06
Contingency Reserve	129,190.74
Total	$7,691,563.60

To the above amount will be added all, or a portion of, $857,016.03, which has been assigned by the Department to Account 100.6—Electric

Plant in Process of Reclassification. The amount assigned by the Department to Account 100.6 represents the amount remaining in the respondent's plant accounts as of December 31, 1943, covering fees paid to affiliates by it, discussed in a later section of this order. Upon completion of further analysis by the respondent and a determination by the Department, that portion of the $857,016.03 which represents intercompany profits will be assigned to Account 107 and the remainder will be assigned to Account 100.1 and Account 108—Other Utility Plant. The $857,016.03 is composed of the following items:

Electric Plant	$788,105.73
Gas Plant	59,549.97
Railway Plant	7,020.27
Motor Coach Plant	682.52
Steam-Heat Plant	1,657.54
Total	$857,016.03

Total Excess Recorded Cost over Original Cost All Plant—December 31, 1936

The two adjustment accounts of 100.5 and 107 total $19,212,754.64 as of December 31, 1936, as compared with $17,718,637.05 found by the Commission's staff as assignable to those accounts, both of which are exclusive of intercompany profits on fees paid affiliates and the determination by the Department of an amount of $346,500 transferred from Accounts 100.1 and 100.4 to Account 100.5, which has been previously discussed. The assignment of the $346,500 to Account 100.5 increases the total amount assigned by the Department to these two accounts, exclusive of intercompany profits, to:

Account 100.5	$11,867,691.04
Account 107	7,691,563.60
Total	$19,559,254.64

Additions, Retirements and Adjustments to Plant Account from December 31, 1936, to December 31, 1943

From the period of December 31, 1936, to December 31, 1943, the respondent has made numerous adjustments, corrections, and additions to its plant accounts. The Department finds that during this period the following accounting entries were made:

(1) During the year 1937, an entry was made whereby the plant account was credited and capital surplus debited with $129,190.74 representing a balance of a reserve for contingencies originally set up by the Arkansas Central Power Company and subsequently transferred to capital surplus on the books of respondent.

(2) The evidence discloses that in November and December, 1939, the respondent adjusted its plant account by crediting thereto $3,947,813.92 and charging the same to Account 140—Unamortized Debt Discount and Expense.

Of this amount, $1,767.546 represented unamortized debt discount and expense with respect to the issuance and sale of respondent's securities. The remainder of $2,180,267.92 represented bond discount and expense, premium, and interest on bonds of predecessor companies. The portion of these items which had expired and which should have been charged off prior to the time of making the above entry was charged to Account 271, Earned Surplus.

(3) During the years of 1941 and 1942, the respondent disposed of its water and ice properties. The amounts assigned by the respondent to these properties were:

Water Property	$5,591,432.58
Ice Property	1,110,985.78
Total	$6,702,418.36

The above amount is $2,971,627.04 in excess of the consideration received for these properties, and that amount has been charged to the reserve for depreciation and retirement.

(4) During the years 1937 to 1943 numerous additions and retirements of plant were made by respondent. These additions and retirements have been made to conform to the costs as shown by the original cost studies hereinbefore discussed.

The Department, after analysis and careful consideration, finds that: $745,017.33 has been credited Account 100.4—Electric Plant Held for Future Use, and charged to Account 110, Other Physical Property. This item is discussed elsewhere in this opinion, under the topic, "Blakely Dam Lands."

With the exception of the entry under (1) above, and the amount of $2,180,276.92 charged to Account 140 under (2) above, hereinafter expressly dealt with, the accounting entries made by the respondent correctly reflect the corrections, adjustments, additions, and retirements that should have been made with regard to those particular items.

These entries with such additional entries as will be determined by the Department, should be and are hereby approved.

Summary Analysis of Plant Account at December 31, 1943

As of December 31, 1943, the respondent's plant account was recorded at a cost of $63,652,282.28. The amounts included therein are as follows:

Original Cost all Plant	$50,351,320.64
Excess of System Cost over Original Cost	8,829,386.67
Plant Account in Process of Reclassification	857,016.03
Unrecorded Retirements	605,889.64
Excess of Recorded Cost over System Cost	2,678,413.12
Discount on Capital Stock	75,814.12
Capital Stock Expense	254,442.06
Total	$63,652,282.28

The original cost of the respondent's plant is subdivided as follows:

Electric Plant	$45,536,073.25
Gas Plant	1,312,134.05
Street Railway Plant	2,521,097.31
Motor Coach Plant	682,357.72
Steam Heat Plant	272,534.14
Other Physical Property	27,124.17
Total	$50,351,320.64

The excess of system cost of the respondent's plant over the original cost thereof is subdivided as follows:

Electric Plant	$6,821,229.88
Street Railway Plant	1,882,327.75
Steam Heat Plant	125,829.04
Total	$8,829,386.67

With the exception of $745,017.33 applicable to Blakely Dam Lands, the above schedule correctly reflects the proper amounts applicable to each of the individual accounts to which they have been assigned.

Plant Account As of December 31, 1936, and As of December 31, 1943

A comparison of the Respondents' plant account as of December 31, 1936, with that of December 31, 1943, deserves some comment. This comparison is set up in statement from below:

Original Cost	12–31–36	12–31–43
Electric Plant	$36,124,766.44	$45,536,073.25
Water Plant	3,791,638.01	
Gas Plant	1,275,217.91	1,312,134.05
Street Railway Plant	3,207,239.47	2,521,097.31
Motor Coach Plant	111,006.53	682,357.72
Ice Plant	1,037,863.30	
Steam-heat Plant	289,474.63	272,534.14
Other Physical Property	170,354.33	27,124.17
Total Original Cost	$46,007,560.62	$50,351,320.64
Excess of System Cost over Original Cost		
Electric Plant	$7,461,325.12	$6,821,229.88
Water Plant	1,799,794.57	
Street Railway Plant	2,399,228.53	1,882,327.75
Ice Plant	73,122.48	
Steam-heat Plant	134,220.34	125,829.04
Total Excess	$11,867,691.04	$8,829,386.67
Total System Cost	$57,875,251.66	$59,180,707.31
Plant in Process of Reclassification		$857,016.03
Excess of Recorded Cost over System Cost	12–31–36	12–31–43
Excess at Acquisition	$2,678,413.12	$2,678,413.12
Unrecorded Retirements	605,889.64	605,889.64
Unamortized Debt Discount & Expense	3,947,813.92	
Discount on Capital Stock	75,814.12	75,814.12
Capital Stock Expense	254,442.06	254,442.06
Contingency Reserve	129,190.74	
Total	$7,691,563.60	$3,614,558.94
Total Recorded Cost	$65,566,815.26	$63,652,282.28
Total Excess of Recorded Cost over Original Cost	$19,559,254.64	$12,443,945.61

The above statement shows that since December 31, 1936, the respondent has disposed of approximately $7,000,000 of the excess of the recorded cost of its plant over the original cost thereof.

The foregoing comparative tabulation shows that there still remains in the plant account of the respondent $3,614,558.94, representing the excess of the recorded cost of its plant over the System Cost thereof, of which amount $75,814.12 represents Discount on Capital Stock, and should be charged to Account 150, and $254,442.06 represents capital stock expense and should be charged to Account 151— Capital Stock Expense, leaving a balance of $3,284,302.76 as the excess of recorded cost over system cost, which the Department finds should be classified in Account 107— Electric Plant Adjustments.

The statement also shows that there still remains in plant account of respondent $8,829,386.67, representing excess system cost over original cost. The Department finds that $6,947,058.92 of this amount (which includes $125,829.04 attributable to the steam-heat plant) should be classified in Account 100.5 and that the remaining amount of $1,882,327.75 should be classified in Account 108—Other Utility Plant. The amount of steam heat plant is included in Account 100 for reasons hereinafter discussed.

Having found the proper amounts

attributable to the various accounts, we summarize the accounts of the respondent as of December 31, 1943, as follows:

Summary of Above Findings

100.1—Electric Plant in Service	$45,259,363.27	
100.3—Construction Work in Progress	405,426.54	
100.4—Electric Plant Held for Future Use	143,817.58	
100.5—Electric Plant Acquisition Adjustments	6,947,058.92	
100.6—Electric Plant in Process of Reclassification	857,016.03	
100 —Electric Plant		$53,612,682.34
107 —Plant Adjustments		3,284,302.76
108 —Other Utility Plant		6,397,916.83
110 —Other Physical Property		27,124.17
150 —Discount on Capital Stock		75,814.12
151 —Capital Stock Expense		254,442.06

Having determined the amounts properly includible in the foregoing accounts, it becomes necessary for the Department to determine the proper accounting principles applicable to Accounts 100.5 and 107 and make such disposition of the amounts in those accounts as the Department finds to be proper.

Original Cost Accounting

Disposition of Amount Charged to Account 107—Electric Plant Adjustments

[9–11] With respect to Account 107, the Department's Uniform System of Accounts provides:

"The amounts includible in this account shall be classified in such manner as to show the nature of each amount included herein and shall be disposed of as the Department may find or direct."

With respect to the amount of $3,284,302.76, heretofore classified in Account 107, the evidence discloses and the Department finds that it consists of $605,889.64, which is the amount necessary to adjust prior retirements of property to an original cost basis, and that $2,678,413.12 represents the difference between the amount which Electric paid for the property sold to respondent, in arm's-length transactions and the amount recorded by the respondent. Based on the System of Accounts and evidence in the record, the Department finds that it should direct and order that the amount of $605,889.64 be charged to Account 250—Reserve for Depreciation or Retirement of Electric Plant.

With respect to the balance of $2,678,413.12, the respondent takes the position that this item does not represent a write-up; that the amount at which its plant Account was carried on its books represented only the translation of actual values; that to place any lesser amount in the plant account would have been an under-valuation and writing down its then existing and functioning assets; that the original entry represents actual cost, and that it actually issued and delivered to Electric, in payment for property, stocks, and bonds representing the amount and that it should remain in its plant, account, or at least appear upon its balance sheet, and should not be charged off or amortized.

While it may be true that respondent, in payment for property, issued and delivered to Electric, stocks and bonds in said amount, the evidence clearly shows that the transaction was

not made at arm's-length and that the amount represented a write-up—water pumped into the plant accounts and capital structure for the purpose of enabling Electric to realize a profit.

The evidence conclusively shows that Electric caused the respondent to be organized and from organization until this date holds the majority of its voting stock and has absolute control over it. The respondent was organized pursuant to a plan whereby it was to acquire all the intermingled and interspersed physical property of several corporations and also scattered properties then in the name of two individuals, nominees of Electric, as well as to acquire other properties. All of the properties acquired by the respondent, with respect to which this item arose were owned or controlled by Electric.

The evidence further shows that the first directors of respondent were three Little Rock lawyers associated with the general counsel of the new company; that they acted as incorporators and after organization immediately resigned and Electric selected three New York lawyers as directors, all of whom were connected with the firm that represented Electric. Thereupon, these three New York lawyer-directors passed a resolution fixing the stated value of the securities to be issued and delivered to Electric in payment for these various properties to be conveyed to respondent. Apparently no appraisal of the properties was made and there is no evidence that any data were furnished these directors on which they could base an opinion as to the value of the assets or their costs to Electric, which it proposed to convey to the respondent for securities. The sale and purchase was not between a willing buyer and a willing seller, and the respondent was not in a position to protect its own interest, and those in control of its affairs apparently had more interest in Electric than in respondent. The terms and the conditions of the transfer of the property and the issuance and delivery of the securities were not only suggested, but dictated by Electric. Looking to substance rather than form, the transaction was in reality one in which Electric was dealing with itself. The amount now under discussion, according to the evidence, represents profit to Electric and a fictitious write-up of respondent's plant account.

Electric was acting more or less in a fiduciary capacity in its transactions with respondent. It should not be permitted to obtain a profit out of transactions with a corporation which it owned and controlled. Electric, so to speak, was trustee for future investors in the securities of respondent; and, at the same time, was selling properties to it for a profit.

The language of the late Mr. Justice Cardoza may, with propriety, be quoted for the purpose of depicting the course of conduit which Electric should have observed in the organization of, and transfer of property to, the respondent. He said:

"Many forms of conduct permissible in a work-a-day world and those acting at arm's-length are forbidden to those bound by fiduciary ties. A trustee is held to something stricter than the morals of the market place. Not honesty alone, but the punctilio of an honor the most sensitive, is the standard of behavior. As to this there has

developed a tradition that is unbending and inviolate."

We realize that the terms "write-up" or "inflationary items" are accounting terms which have a relationship not to value but to cost. From the accounting viewpoint items may be termed write-ups or inflationary yet represent earning power or actually existing functioning assets. Respondent claims that it now has functioning assets which exceed in value the actual cost to it plus such actual write-ups as represented by the item under consideration. Assuming such to be true, we are nevertheless of the opinion that such an item has no place in the books of a utility, which are records of cost.

The item under discussion represents a fictitious or inflationary write-up of plant account and does not represent a bona fide cost of property. The provisions of the Department's Uniform System of Accounts requires that such items shall be disposed of as the Department may find and direct. The Department is of the opinion that the amount in this account should be disposed of immediately. Such treatment is supported by ample accounting authority.

The Department finds, therefore, that the sum of $2,678,413.12 representing the balance remaining in Account 107, after the credits hereinbefore directed have been made, should be charged to Account 271 (Earned Surplus), or to Account 270 (Capital Surplus) if a Capital Surplus is created for that purpose.

Accounting Principles Applicable to Account 100.5

[12, 13] The Department's Uniform System of Accounts for Electric Utilities provides for electric utility plant accounting on the basis of the original cost to the person first devoting the property to public service. Electric Plant Account Instruction 3, paragraph A, provides:

"All amounts included in the accounts for tangible electric plant, consisting of plant acquired as an operating unit or system, shall be stated at the original cost incurred by the person who first devoted the property to utility service. All other tangible electric plant shall be included in the accounts at the cost incurred by the utility."

The Department's order of November 10, 1943, among other things, required the respondent to show cause why it should not be required to adjust its accounts to conform to the Uniform System of Accounts for Electric Utilities as prescribed by the Department and to write out or charge off any amount or amounts carried in its books of account which do not reflect actual values.

The record in this case shows that there is a very sharp conflict of opinion in the accounting field as to the correct original cost accounting principles which should be applied with respect to public utilities. In this case, the conflict centers around the question as to the accounting and disposition of the amount properly included in Account 100.5—Electric Plant Acquisition Adjustments.

In support of its contention with respect to this highly controversial question, the respondent has offered in evidence the expert testimony of several witnesses who have gained national reputation and who are conceded to be among the leaders in the

accounting field. The witnesses for respondent on this question were as follow:

Mr. George O. May of New York, who is author of "Financial Accounting" and who was formerly the senior partner and chief executive of the firm of Price, Waterhouse and Company. At one time he was consulting accountant to the New York Stock Exchange.

Mr. Thomas Henry Sanders of Cambridge, Massachusetts, who is now professor of accounting at the Graduate School of Business Administration of Harvard University. He is the author of many books, articles, and reviews on accounting subjects, including "A Statement of Accounting Principles," in the preparation of which he collaborated with Mr. H. R. Hatfield and Mr. U. Moore.

Mr. William A. Paton of Ann Arbor, Michigan, who is now professor of accounting in the School of Business Administration and professor of economics at the University of Michigan. Mr. Paton is the author of many books including "Advanced Accounting" which was published in 1941.

Mr. Henry A. Horne of Brooklyn, New York, who is a member of the firm of Webster, Horne and Blanchard of New York and who is the author of many magazine articles and pamphlets on matters relating to the practices of accounting.

Mr. Walter B. Cole of Fayetteville, Arkansas, who is professor of accounting in the College of Business Administration at the University of Arkansas. In addition to teaching, he has been engaged in the practice of accounting since 1926.

Mr. Joe Bond of Little Rock, Arkansas, who is a member of the firm of Joe Bond and Company and who has had considerable experience in the regulatory field. He has been actively engaged in the practice of accounting for many years. He is a member of the American Institute for Accountants and has served as secretary of the Arkansas State Society of Certified Public Accountants.

The opposing views were presented in this record by Mr. Charles W. Smith and Mr. Fred Kleinman who testified as witnesses for the Department. Mr. Charles W. Smith is the chief of the bureau of accounts, finance and rates of the Federal Power Commission. Mr. Fred Kleinman is chairman of the National Association of Railroad and Utilities Commissioners' Committee on Accounts and Statistics for Public Utilities. He is also chief accountant of the Illinois Commerce Commission.

The expert accounting authorities heard in this proceeding agree that the correct basis of accounting for recording fixed assets is cost. They are also in agreement that this cost should be the cost to the accounting company. This accounting principle being accepted, it seems that there should be little difference of opinion as to the proper method of accounting for the fixed assets of a public utility. Such is not the case, however. Charles W. Smith and Fred Kleinman, who are two of the nation's foremost proponents of the "original cost" concept, take the view that any cost incurred by the accounting utility in the acquisition of utility property, which cost exceeds the original cost thereof, should be amortized. They base this

view upon the theory that sound accounting principles require the amortization of such items. Mr. Smith stated his views of this subject as follow:

"When it comes to public utilities it seems to me that the case for amortizing intangibles is conclusive. While there may be some doubt about this matter in the case of industrials, I do not see how there could be any doubt in the case of public utilities which depend for their existence upon franchises given by the public which is subject to regulation, whose intangibles are really created by the public, and whose intangibles would disappear overnight if the franchises were withdrawn or if the regulatory Commission would fix rates so low as to yield an inadequate return thereon. Accordingly, instead of offending sound principles of public utility accounting, sound principles of accounting and public policy require the amortization of such items, in my opinion."

Mr. Kleinman was asked the following question:

"Do sound accounting principles require that an amount properly includible in Plant Acquisition Adjustment Account be amortized or otherwise disposed of?"

To this question he made the following reply:

"Ultimately, yes. All intangible elements of value on a realistic basis, giving consideration to the period that had elapsed between acquisition and the date this writing-off process begins. Of course, the best thing is to write it off immediately. The tangible property and intangible property items probably should not be required to be written off faster than the property to which it pertains go out of existence."

While the above statement is somewhat ambiguous, the Department is of the opinion that it is Mr. Kleinman's intention to support the position of Mr. Smith in this matter.

Mr. George O. May, witness for respondent, was asked the following question:

"Would or would not a requirement by a regulatory Commission that all amounts in excess of original cost be written off, without consideration of the cost to the utility or existing values, constitute a departure from the generally accepted principle of accounting for fixed assets?"

To this question, he made the following answer:

"Such a requirement would constitute a definite and unwarranted departure from the generally accepted principle of accounting for fixed assets, because it would make original cost the sole basis of accounting and would completely ignore the naturally significant basis which is cost to the present accounting unit—corporation or enterprise."

Later, in Mr. May's testimony, he made the following statement regarding the writing off of intangibles:

"There is no requirement, from the standpoint of generally accepted accounting practice, that the purchase costs applicable to intangibles which are coterminous with the enterprise should be written off. My views on writing off intangibles are set forth at length in Chapter IX of 'Financial Accounting.' I can, perhaps, summarize what I say there as follows: In my experience, it is only recently that any suggestion has been made that

sound accounting theory called for the amortization of intangibles which have no determinable date of expiration of life. Accounting makes no provision for the hazard that the enterprise as a whole will become economically obsolete. There is no basis for making such a provision. If that event happens, a large residual book value of tangible assets not written off through depreciation accounting will become valueless, as well as the intangible assets. There is no provision in accounting for this hazard in respect of intangible property. It seems, therefore, clear to me that there is even less justification for any attempt to write off intangible values, the life of which is coterminous with that of the enterprise, through regular charges against income."

Joe Bond was asked the following question:

"Mr. Bond, in your opinion, do accounting principles compel or even sanction the writing off of any amounts in 100.5 which are stated therein at cost and represent value?"

His reply was:

"No, they do not. As stated before, 'Original Cost' can become the measure of the total value of a property only under such an edict as would impose such cost as a permanent limit on the value of future benefits. Were such a limit imposed, all costs, in excess of this amount, would represent an account behind which were no present or future benefits, and correct accounting treatment would require that the entire amount be immediately written off as worthless. Until such value is frozen, however, or until value is definitely determined by a limitation on future benefits, a write-off of an amount segregated in this account is contrary to good accounting and violates those rules and principles which govern the accounting for costs.

"In spite of established rules governing the accounting for costs of fixed capital, we find some regulatory authorities advocating the write-off of amounts segregated in Account 100.5, without any regard as to whether there was or was not any value behind these amounts. We even find that these authorities go so far as to say that such a policy is dictated by the fundamental principles of good accounting and that the accounting profession would sanction, if not dictate, such a policy; I say with no hesitation whatsoever that this statement is untrue, and further, that any public accountant who thoroughly understands the peculiarities of utility accounts, and the effects on the industry of regulatory restrictions, would disapprove of, and even resist, an attempt by management to write off any intangible of actual value when it is stated at actual cost. Accountants familiar with regulatory matters have always realized that recorded cost was one of the factors to be given consideration in the determination of a rate base ever since the Smyth-Ames decision, and that such rate base actually influenced the value of all assets, this value representing future earning power. These accountants knew, therefore, that the writing off of recorded costs, while the values acquired by such costs still remained, was equivalent to an outright destruction of value. No accountant would ever be guilty of advocating an accounting policy which would have the effect of

lessening the value of the assets behind the accounts."

The foregoing answers represent the view of the other accounting witnesses of the respondent.

The Department has heard much testimony, in addition to the above quotations, regarding the original cost concept of accounting. It believes that this concept, as generally advocated for accounting in the regulatory field of public utility cost accounting, is based upon accounting principles or conventions evolved from entirely different economic concepts and from cost accounting in a field unregulated except as to competition. The Department finds that, in so far as strict accounting principles are concerned, there is ample authority for the amortization of the cost of intangibles. This accounting authority, however, does not presume to make the amortization of intangibles mandatory, even in unregulated industries. It recognizes the trusteeship of management as the custodian of the funds of the particular business. It leaves the matter of the disposition of amounts carried in the accounts representing the costs of intangibles entirely to the discretion of that management. Accounting authority recognizes that accounting is the recording, classifying, and summarizing of costs and in no way attempts to account for values, except in so far as liquid assets, as distinguished from fixed assets, are concerned. It also recognizes that whatever values exist in an unregulated industry remain in that industry, regardless of the method of accounting for the costs thereof.

There are those who urge that these principles do not apply, however, in the regulated field of public utility accounting. They seek to evaluate the properties of public utilities on the basis of the original cost of the properties used in public service. The Department finds that this view is not in accord with sound accounting principles for the following reasons:

(1) Accounting for public utility plant is on the basis of cost rather than value.

(2) Cost of fixed assets, as interpreted by the accountant, is the cost to the accounting company, rather than cost to some prior owner.

(3) Accounting for utility property on the basis of the segregation of the original cost of those properties from the cost of acquisition thereof, as required by its Uniform System of Accounts for Electric Utilities, is not in violation of sound accounting principles.

(4) The segregation of these costs into separate subaccounts of a balance sheet account is an expedient to facilitate the supervision and rate regulation of public utilities.

(5) Accounting does not attempt to determine values of fixed assets.

(6) Costs representing determined values are properly includible in the accounts of a utility regardless of the intangibility of the asset acquired by such cost and regardless of the lapse of time between the occurrence of such costs and the evaluation of the asset acquired.

(7) The accounting for such costs is the accounting by management of its trusteeship of funds.

(8) The disposition of costs of so-called intangibles representing determined value is, primarily, a matter

of judgment of management and regulatory agencies, rather than a mandatory provision of accounting.

From the standpoint of established accounting principles, therefore, it is apparent that an item should not be stricken from the record merely because it is classified by an accountant as an intangible asset.

While the administration of a system of accounts, by a regulatory body may involve other than accounting determination, it cannot direct a disposition of amounts upon the premise that it is suggested by sound accounting when, in fact, it has no such basis. Nor should we require accounting which is not in accord with sound accounting principles and practices. The record contains the statement that regulatory accounting has more latitude. To whatever extent this may be true, it is not without positive limitations, and care must be taken not to exercise powers which do not fall within the accounting field. True, our regulatory authority encompasses other powers than accounting supervision; yet we cannot legislate away existing rights, destroy values, or adjudicate rights and interests between persons under the guise of compelling uniform or more informative recording and reporting.

The Department's system of accounts divides the plant account of a utility substantially in the same manner that the Federal Communications Commission's system of accounts subdivides plant accounts of telephone companies. Also, there is no substantial difference between the Department's system and the system of the Federal Power Commission. Both have an Account 100.5 to which is charged items of the same nature and character, and both systems carry like provisions with respect to the disposition of them. The Federal Communications Commission system account which corresponds to the Department's Account 100.5 is Account 100.4. The Federal Communications Commission's system provides: "The amounts recorded in this account with respect to each property acquisition shall be disposed of, written off, or provisions shall be made for the amortization thereof in such manner as this Commission may direct." (See Instruction C—under Account 100.4.)

In American Teleph. & Teleg. Co. v. Federal Communications Commission (1936) 299 US 232, 81 L ed 142, 16 PUR(NS) 225, 230, 57 S Ct 170, the telephone companies contended that Account 100.4, representing the difference between the original and present cost, was not to be reckoned, either wholly or in part, as a statement of existing assets, but must be written off completely and that it was a mandatory duty of the Commission to extinguish the entire balance recorded in that account. This contention was based upon the language quoted above setting forth the disposition to be made of the balance charged to this account. Based on this contention the telephone companies took the position that the order establishing the system of accounts was void and ineffective. In disposing of this contention, the court said:

"If Subdivision (C) had the meaning thus imputed to it *there would be force in the contention that the effect of the order is to distort in an arbitrary fashion the value of the assets,* but the imputed meaning is not the

true one. The Commission is not under a duty to write off the whole or any part of the balance in Account 100.4, if the difference between original and present cost is a true increment of value. On the contrary, only such amount will be written off as appears, upon an application for appropriate directions, to be a *fictitious or paper increment.* This is made clear, if it might otherwise be doubtful, by an administrative construction. . . . To avoid the chance of misunderstanding and to give adequate assurance to the companies as to the practice to be followed, we requested the Assistant Attorney General to reduce his statement in that regard to writing in behalf of the Commission. He did this and informs us that 'The Federal Communications Commission construes the provisions of Telephone Division Order No. 7–C, issued June 19, 1935, pertaining to Account 100.4' as meaning 'that amounts included in Account 100.4 that are deemed, after a fair consideration of all of the circumstances, to represent an investment which the accounting company has made in assets of continuing value will be retained in that account until such assets cease to exist or are retired; and, in accordance with Paragraph C of Account 100.4, provision will be made for their amortization.'" (Italics supplied).

The court then distinguished the case before it from the case of New York Edison Co. v. Maltbie (1936) 271 NY 103, 15 PUR(NS) 143, 2 NE(2d) 277, wherein the court held to be void a provision of the New York Commission's system of accounts which inflexibly required accounts similar to Account 100.4 of the Federal Communications Commission's system and 100.5 of our system to be written off in its entirety out of surplus irrespective of whether it represented value.

At the time the Department adopted its system of accounts, the Federal Communications Commission's system had received a construction from the Supreme Court of the United States, and it must be presumed that the Department, when it adopted its system, did so in the light of this decision.

This decision of the Supreme Court of the United States is a construction of the Federal Communications Commission's system's provision with respect to the disposition of the amount charged to Account 100.4 of their system to the effect that the amount charged to said account shall not be charged off or amortized without giving consideration to the increment of value represented thereby.

Since the provisions of its system with respect to the disposition of the amount charged to Account 100.5 is substantially, if not exactly, similar to the provisions found in the Federal Communications Commission's system with respect to Account 100.4, and since the Department's System of Accounts was adopted after the Supreme Court's construction of the Federal Communications Commission's system, the Department believes and finds that a proper construction of the provision with respect to disposition of amounts charged to Account 100.5 does not require the amount remaining in said account to be charged off or amortized, irrespective of whether it represents value.

Disposition of Amount Charged to Account 100.5—

Electric Plant Acquisition Adjustment

[14] The amount of $6,947,058.92 classified in Account 100.5 as at December 31, 1943, represents the difference between the original cost of respondent's electric property and the amount which Electric, or respondent, actually paid for the property as the result of arm's-length bargaining.

It is readily seen that this item stands on a different footing from the amounts charged to Account 107. This is not only true with respect to accounting rules and principles, but is true in business morals and in law. Account 107 represents what is commonly known as a write-up, while Account 100.5 represents part of the actual cost to respondent of its property.

Those who would charge off or provide for amortization of the balance remaining in Account 100.5 insist that such should be done because it represents payment for so-called intangible values. While it is true that the item may represent an intangible, that fact, of itself, does not demand that it be given the treatment suggested.

In the opinion of the Department the provisions of its Uniform System of Accounts were designed and intended to preserve rather than destroy evidence of cost incurred as the result of an arm's-length transaction, and do not require or permit arbitrary adjustments of accounts of the respondent or any other public utility which have the effect of destroying existing valid property rights. It, therefore, concludes that under its system of accounts no amount charged to Account 100.5 should be eliminated, if such costs are supported by value.

[15, 16] Let us now consider the question as to whether or not there are values behind the amounts now classified in Account 100.5. An increment of value of property is any fact or circumstance which makes that property more useful and more serviceable to the owner, and, in the case of property devoted to a public service, that which enables its owner to render better, more efficient, and cheaper service to the public.

The evidence is conclusive that the purpose of Electric and the respondent in acquiring the properties was to physically and corporately integrate them into one coördinated system, pursuant to a plan theretofore adopted. It is unreasonable to assume that the predecessor owners of these properties would have sold them at a price representing a mere return of the actual cost to them of the physical properties. It is therefore reasonably certain that had the purchase price of the properties been limited to their original cost, neither respondent nor Electric could have acquired them for any purpose. As long as these properties were diversely owned and operated they could not have been integrated, physically or corporately, unless all of their several owners agreed. Human experience teaches, even though it would have been possible to have reached an integration agreement, with respect to all of the severally and diversely owned properties, it would not have been practical.

It is obvious that it is impossible under any theory of accounting to purge all intangible value from the

records of a utility. Clearly intangible value exists in a rate base in a utility property—whether or not its presence be recognized as such. In fact, in any operating utility there is complete inseparability of tangible and intangible values.

Common ownership of these separate properties was necessary before integration was possible. Since Electric could not have purchased these going businesses and properties at their original cost, the amount paid for the properties, in excess of that figure, must be treated as a part of the cost of the entire integrated system, including the cost of all acquired intangibles. The question for determination, therefore, is whether cost of the right to integrate those going concerns and properties and to acquire the gross businesses, the customers and other intangible values acquired and exercised under the circumstances here in evidence, is an asset of such value, or such an increment to value, as to justify this cost. If these rights and these intangibles are now actual assets of continuing value, and were of such value at the time the cost was incurred, the amount assigned to Account 100.5 on account thereof should not be charged off.

It should not be necessary to enter into an exhaustive explanation of the benefits of physically integrated electric property. The development of the utility industry has been influenced, and the art has been advanced, more by the recognition of the values and extended use arising from wise and economical integration than, perhaps, any other factor. The Congress, by § 202(a) of the Federal Power Act, clearly recognized that integration of electric properties is definitely in the public interest.

A very clear statement and explanation of the value and benefits of integration of separate electric properties is found in an address of Honorable Basil Manly, vice chairman of the Federal Power Commission, made before the World Power Conference in 1936. In part, he said:

"When two companies or a group of companies pool their generating facilities, less reserve capacity is required. Independent operation necessitates a reserve sufficient to protect a system against a major outage. A coincidence of such outages, however, in two or more systems, is highly improbable, so that the total reserve of the interconnected group becomes less. . . . It brings about a saving in generating capacity amounting to the difference between the sum of the demands of each system, and the new maximum demand upon the combining of the loads of the coördinated systems. In a major emergency, the value of interconnection cannot be weighed in mere dollars. . . . And in time of war, the very safety of the nation might conceivably depend upon the extent and character of the networks which would permit one region, with heavy industrial demands for power, to draw upon the generating plants of neighboring regions."

The daily experience of this nation's war industries proves that Mr. Manly's words were, indeed, prophetic. Integration of electric systems has accelerated the production of war materials—not by days or months, but by the years that would have been required to build the necessary generating facilities to carry that load. In-

tegration has tended to shorten the war. The present emergency only emphasizes the inherent public advantages of integration in times of peace.

Prior to the program of acquisition, construction, and integration which resulted in the creation of the present electric system of respondent and its organization, the electric industry in this territory was in a pioneer and substantially undeveloped stage. This is made apparent by a comparison of the facilities in service in April, 1925, with the service and facilities shown at the end of what may be appropriately called respondent's major development period, the year 1929. The integration of the properties has been of substantial benefit to the public of the areas served now by respondent.

The evidence further shows that the integration was not the result of fortuitous circumstances. The new enterprise was planned and promoted for the purpose of developing the territory.

The Department finds that these results could not have been obtained by respondent, or by anyone else, except through integration of the physical properties acquired by it as independent operating units. The evidence is further conclusive that neither respondent, nor anyone else, could have successfully integrated and operated the properties and obtained these results except through common ownership thereof, and that such ownership could not have been acquired if respondent, in acquiring the properties, had been limited in the price paid to a mere return to the various owners of the original cost of the physical properties.

After consideration of all the facts and circumstances, the Department finds that the respondent actually expended the item of $6,947,058.92, heretofore found to be chargeable to Account 100.5, and that it represents value as of the date it was expended, and that such value existed and was inherent in respondent's electric system on December 31, 1943; and, therefore, the amount of said item should not be charged off or amortized, and should now be recognized and included as a part of the valid and present existing assets and values, except as follows:

We have discussed generally the amounts properly includible in Account 100.5, Electric Plant Acquisition Adjustment, and the proper disposition of such amounts. Included in Account 100.5 is $904,116.10, which represents the increase in structural value of existing physical properties over the original cost of such properties, as claimed by respondent.

While the Department does not believe that it is practicable at this late date to determine what portion of the excess of system cost over original cost, represents the cost assigned by the purchaser to physical property acquired, still the Department will treat the respondent's claim for such increased structural value as an admission against its interest.

The Department finds, therefore, that the $904,116.10 included in Account 100.5 and attributable to increase in structural value should be amortized in the same ratio and at the same time as the physical property to

which it is attached is depreciated or retired.

Other Accounting Adjustments

Unamortized Debt Discount and Expense

[17] As heretofore referred to, the evidence discloses that in 1939 the respondent adjusted its plant account by crediting thereto $3,947,813.92 and charging the same to Account 140 (Unamortized Debt Discount and Expense). Of the above amount, $1,767,546 represented unamortized debt discount and expense with respect to the issuance and sale of respondent's securities. The remainder thereof, to wit: $2,180,267.92 represented bond discount and expense, premium and interest on bonds of predecessor companies. The portion of these items which had expired and which should have been charged off prior to the time of making the above entry was charged to Account 271 (Earned Surplus).

The Department is of the opinion and finds that the item of $2,180,267.92 representing bond discount, expense, premium, and interest on bonds of predecessor companies should not have been charged to Account 140. The system of accounts contemplates that there should only be charged to this account such items as represent discount and expenses suffered and incurred by a utility with respect to the issuance and sale of its own securities and not those of its predecessor companies, unless such securities are assumed by the utility.

Since this item was charged to Account 140, the proof shows that it has been reduced through amortization charges below the line, and that there remains in Account 140, as at December 31, 1943, only $815,546.70 of the $2,180,267.92 charged thereto in 1939.

The Department finds that it should order and direct respondent to credit to Account 140 and charge to Account 271 (Earned Surplus) or the Account 270 (Capital Surplus), if a capital surplus is created for that purpose, the sum of $815,546.70.

Distribution of Balance in Reserve for Depreciation

[18] It appears to the Department that the respondent has heretofore carried the reserve for depreciation and retirements of all of its properties in Account 250 (Reserve for Depreciation or Retirement of Electric Property) and that the balance in this account at January 1, 1944, was $7,104,219.22 and that said balance should be segregated, leaving in said Account 250 only that portion of the reserve applicable to the electric property.

The Department therefore finds that the respondent should be ordered and directed to charge said Account 250 with $1,949,592 and credit the same to Account 253 (Reserve for Depreciation or Retirement of Other Property) and of the amount of $1,949,592, $1,817,422.89 and $132,169.11 should be earmarked respectively as applying to Street Railway and Motor Coach Property and Gas Property.

Rate Base

The Department is empowered to "find and fix just, reasonable, and sufficient rates to be thereafter observed, and enforced and demanded

by any public utility." Section 19, par. 1, Act 324, 1935.

It is necessary, in determining the reasonableness of the rates, to fix the amount—a rate base—upon which the utility is to be allowed a return.

The statutory powers above quoted have been construed by our court in the case of the Department of Public Utilities v. Arkansas Louisiana Gas Co. (1940) 200 Ark 983, 36 PUR (NS) 41, 44, 45, 142 SW(2d) 213. The court said: ". . . It is a very comprehensive act of seventy-one sections giving to the Department broad and comprehensive powers. It was established by the legislature to act for it, and it has the same power a legislature would have, it acting within the power conferred by the act. . . . if the Department's order is supported by substantial evidence, free from fraud, and not arbitrary, it is the duty of the courts to permit it to stand, even though they might disagree with the wisdom of the order. In such a case our judgment will not be substituted for that of the Department."

The response in this cause alleges a violation of the Federal Constitution. Therefore the holdings of the United States Supreme Court must be considered. Its latest opinion is Federal Power Commission v. Hope Nat. Gas Co. decided January 3, 1944, 320 US 591, 88 L ed 276, 51 PUR(NS) 193, 64 S Ct 281. On page 283 of 88 L ed, 51 PUR(NS) at p. 200 is found the following language: " . . . the Commission's order does not become suspect by reason of the fact that it is challenged. It is the product of expert judgment which carries a presumption of validity. And he who would upset the rate order under the act carries the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences." Thus apparently the decision of our court and the Federal court are in harmony in this regard.

In the Hope Case, *supra,* the court further said: "It is not theory but the impact of the rate order which counts. If the total effect of the rate order cannot be said to be unjust and unreasonable, judicial inquiry under the act is at an end. . . . Rates which enable the company to operate successfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed, certaintly cannot be condemned as invalid, even though they might produce only a meager return on the so-called 'fair value' rate base." (51 PUR(NS) at pp. 200, 202.)

In exercising the very broad powers conferred by our statute and interpreted by our courts, we are impressed with one of the last public statements made by the late Joseph B. Eastman, who for twenty-five years was a member of the Interstate Commerce Commission, when, in discussing desirable attributes of members of the regulatory tribunals, said: "Zealots, evangalists, and reformers have their place before a tribunal, but not on it."

In this record there are three principal methods of rate base determination offered for our consideration. These will be considered seriatim.

Original Cost Depreciated As a Rate Base

[19, 20] Most of the properties of the respondent were dedicated to pub-

lic service at a time when there was no Uniform System of Accounts requiring division of plant account as in the current systems of both the Department and Commission. Each utility in the state therefore kept its books as the owner determined.

The Department, in adopting its Uniform System of Accounts, realized that it was not possible in many instances to determine absolutely the original cost of plant from the records kept theretofore by the utilities, and provided that if original cost were not known, it might be estimated. This fact was likewise recognized by the Federal Power Commission and its System of Accounts has a similar provision.

The original cost adopted in this record is estimated. While the Department believes—or it would not have approved the same—that it is as near the actual original cost as could be determined at this time from the available records and evidence, nevertheless it is an estimate. The weight to be given estimated reproduction cost new appraisals in determination of a rate base is discussed under a subsequent topic of this opinion. What is there said about the probative value of estimates is equally applicable to an estimate of original cost.

The advocates of original cost as a rate base contend that all arm's-length profit made by the dedicating owner or any subsequent owner should be eliminated from consideration in the rate base, upon the theory that such arm's-length profit represents "intangibles," and that intangibles should not be recognized in the rate base.

We believe that the fallacy of excluding arm's-length profit from rate base determination can be demonstrated by the following illustration. Assume that a utility plant is constructed at a cost of $1,000,000. That the day before it is dedicated to public service it is sold for $1,100,000. That the purchasers dedicated it to public service. The purchaser would put it on his books at an original cost of $1,100,000, because it had not been dedicated prior to his acquisition.

Assume the same conditions except that the utility was sold the day after its dedication to public service. In the latter instance the purchaser would put it on his books at an original cost of $1,000,000, and enter $100,000 in Account 100.5—Acquisition Adjustment—and would be required to charge off or amortize the $100,000.

We cannot see why the arm's-length profit to the seller in the one instance should be eliminated from the rate base, and in the other instance be included.

The proponents of original cost permit the inclusion of profits made by the constructing contractor and the supplier of materials. We fail to see any difference in the profit realized at arm's-length by the dedicating owner of the utility from any other profit.

There is an implication in this contention that there is something improper in arm's-length profit. This probably arises from differing concepts of value.

A. T. Hadley, as quoted by Webster's International Dictionary, 1937 Edition, under its definition of value, states: "The commercial or competitive theory bases value upon what the buyer is willing and able to offer for an article. The socialistic theory bases value on what the article has

cost the seller in the way of toil or sacrifice."

Our institution and economy were originated and developed under the commercial or competitive theory commonly referred to as private enterprise. The protagonists of the socialistic concept advance interesting arguments, some of which blindly ignore human nature elements—for their position. However, until the majority of our people have been convinced of the soundness of their views, and until the socialistic concept has been adopted into our government and economy, our actions and procedures should be based upon the commercial or competitive theory.

There is another inherent fallacy in the original cost concept when considered as a measure for determining the value of a rate base. It is this: Costs—original or otherwise—are incurred; only value is transferred. If original cost cannot be transferred, why should it be given any greater significance than that of its original purpose, namely, an accounting control?

The proponents of original cost as a rate base state that allowance for the intangibles should be considered in the rate of allowable return. They point out that 7 per cent on $6 yields the same amount of money—42 cents—as 6 per cent on $7. While this is true to the extent of the return received, it is unsound because the investor is entitled to have his investment recognized as such, and to receive a return thereon. It would be impossible for the investor to have his total investment returned to him, under the original cost doctrine.

With these general observations with respect to original cost, we now turn to the facts in the present case. The evidence shows that the present integrated system of the respondent consisted originally of many small, separately operated and scattered plants and systems. These were acquired by the respondent, a new enterprise organized for the purpose of carrying out the plan of integration, and at prices in excess of their estimated original cost. It is reasonably certain that they could not have been acquired by the respondent nor anyone else, at their original cost because human experience teaches that men are loath to sell, unless a profit can be realized. Likewise, if it had been known at the time these properties were acquired that the purchaser would not be allowed to earn a return on the excess of original cost, but must treat such excess as a total loss, no prudent man would have made an investment under the circumstances.

The evidence is undisputed that Electric and respondent paid for the properties $6,947,058.92 in excess of their original cost; that this payment was made as a result of arm's-length transactions; that the investment was made in good faith, and appeared at the time to be prudent. The results following the fulfillment of the plan of integration have fully justified the expenditure. To now deprive the respondent of this investment, after the benefits of the plan have been realized and enjoyed by the public for more than twenty years, would deprive the respondent of its property without due process, as the state and National Constitutions were construed, understood, and applied when the investment was made.

The record shows that throughout the years since integration, the dividends paid on respondent's common stock have averaged not more than a fair return. It shows that none of the excess investment over original cost has been recouped by the respondent or its stockholders. The adoption of original cost would deprive respondent's investors of this investment, and in effect would amount to the taking of the investor's money without due process.

Since this excess of investment over original cost was prudently made, has resulted in public benefits, and has not been recouped by the investors, and today represents existing and functioning values, the Department finds that it would be economically unsound and morally wrong to exclude the arm's-length excess over original cost from the rate base. The Department therefore will not adopt original cost depreciated as a rate base.

Reproduction Cost New Less Depreciation

[21] The respondent urgently insists that dominant consideration should be given to reproduction cost new, less depreciation, in the determination of its rate base. It urges that a conservative type of appraisal was submitted. It insists that the appraisal was carefully prepared. The Department staff checked respondent's inventory and found it to be reasonably accurate. Respondent contends that the labor costs and labor overheads for distribution property were checked and confirmed by independent contractors, and that the basis of pricing—July 1, 1941—was conservative, since prices had advanced approximately 10 per cent since that date.

The Department nevertheless does not feel justified in giving dominant consideration to the reproduction cost in establishing a rate base for the following reasons: labor and labor overhead prices used in the appraisal were based to a large extent on the company's experience. In developing the distribution of labor costs, respondent claims to have selected large jobs during a certain period, but it is the Department's opinion that the costs as developed by respondent are not representative of the costs which would be experienced in wholesale construction such as is contemplated in reproduction cost new appraisals.

For example, the jobs used for developing labor costs appearing in the city of Little Rock showed only 23 meters installed, out of a total of more than 20,000, or about 1/10 of 1 per cent. The record clearly shows that an error of $2.30 upon the 23 meters used as the basis, would be magnified to an error of $3,394.67 when applied to the total number of meters, after the application of overhead and price indices in bringing the labor cost to July 1, 1941, price level. The possibility of discrepancies by reason of small sample used in the respondent's analysis of labor costs is clearly demonstrated by this and similar disclosures in the record. Piecemeal construction is more expensive than wholesale construction assumed in a reproduction cost new appraisal.

Respondent's witnesses admitted that equally competent engineers would vary from 5 to 10 per cent in their reproduction appraisals. When considered in connection with this amount

of property here involved this would amount to a variation of estimates so great as to discredit their value as accurate estimates of a rate base.

Another objection to the reproduction cost new method is that the rate base would be in a constant state of flux. If the respondent were allowed the unearned increment resulting from the rise in price, justice would require that the ratepayers should be allowed the decrement of falling prices. A rate base should be more stable, and should not be markedly influenced by economic conditions.

Reproduction cost new appraisals are estimates. The record shows that even contractors bidding under the same economic conditions upon the same specifications vary as much as 100 per cent in their estimates. This evidence is from two of respondent's witnesses. In obtaining prices of material, prices are often quoted by manufacturers with the statement that they are for appraisal purposes only. There is no assurance that the quoted prices are as low as they would be under competitive bidding. The estimates of labor costs, performance, and efficiency of labor often vary widely.

There is considerable question whether the property would be reproduced as it is today. Some of the small power plants are old and comparatively inefficient, and would not be rebuilt as they exist if the property were actually to be reproduced.

Likewise, in considering reproduction cost, the present depreciated condition of the property must be taken into consideration. This again involves estimates which vary widely. As to depreciation, which is discussed elsewhere, the record shows that witnesses who testified on this subject differ substantially in their estimates.

The foregoing reasons are but few among many which might be discussed as to why reproduction cost new should not be given dominant consideration in establishing a rate base in this case, and the Department therefore will not give it such consideration.

Accrued Depreciation

[22–24] Depreciation is defined in the "Uniform System of Accounts for Public Utilities—Electric," as promulgated by this Department, as follows:

"Depreciation, as applied to depreciable electric plant, means the loss in service value not restored by current maintenance, incurred in connection with the consumption of prospective retirements of electric plant in the course of service from all factors causing the ultimate retirement of the property and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, requirements of public authority, fire, tornado, and other casualties."

"Accrued depreciation," under the above definition, represents the total accrued loss in service value of physical property as of a given date as distinguished from "annual depreciation," which represents the loss in service value during a specified period of one year.

A considerable portion of the record in this case is directed to the ques-

tion of accrued depreciation as applying to reproduction cost. The witnesses for respondent, while agreeing that it is practically impossible to determine with entire accuracy the loss in service value of physical property, have presented two estimates of accrued depreciation. One estimate was determined on what is commonly known as the "observed condition method." The other was based on what purports to be the "present worth method."

The observed depreciation method is a determination of loss of service value by an inspection of the property items and an analysis of past operations of the company, its maintenance policy, the age of the property, and other available information. This method represents an estimate only; and, when applied to properties such as those under consideration in this case, means nothing more than the application of the intuition of the person making the estimate. The Department finds that the application of the observed depreciation method, as reflected by the record in this case, was obtained by a fallacious process of analysis.

The present worth study of depreciation presented by the respondent was based upon a determination of the present worth of the probable future service life of the property. However, the Department's definition of depreciation required the consideration of the present operational *value* of the probable future service life, and the Department finds that, in this respect, the study presented by the respondent is not complete.

In the respondent's study there were available mortality statistics on approximately 20 per cent of the property and such statistics were used and form a reliable basis for determining the future life characteristics of this portion of the property. However, it was necessary to estimate the life expectancy of the remaining 80 per cent of the property, and the uncertainties of estimates on such a large proportion of the property produces an over-all result which is more or less conjectural.

The application of the two methods described above resulted in amounts of accrued depreciation as applying to reproduction cost which differed by approximately $300,000, which variation, in itself, is evidence of the unreliability of accrued depreciation estimates.

Both of the estimates by the respondent were made in connection with a "property value" approach to a rate base, and are indicative of the uncertain and conjectural nature of all such studies.

We have been impressed with the conflicting and confused ideas prevalent on the subject of depreciation, not only as they appear in this record, but as they appear in current literature and discussion on the subject. Two of the major points of confusion seem to result from fallacious presumptions which are as follow:

First, that maintenance and depreciation are independent of each other. The term "depreciation" is defined in the System of Accounts as heretofore quoted as " . . . the loss in—value (of depreciable electric plant) not restored by current maintenance —." Thus maintenance and depreciation

tion are, we think, quite properly combined. Obviously, an imperfectly maintained property loses value, much more rapidly than a property adequately maintained. The record shows that from the viewpoint of actual operations, maintenance, and depreciation are not only interrelated, but inseparable. Any method of separation is arbitrary and imperfect.

Second, that existing depreciation can be accurately measured. We are asked to believe that existing depreciation in an item of property can be determined by inspection, or by complicated mathematical formulae which have for their fundamental components, estimates derived from observation. It is apparent that no method, regardless of how sound in reasoning it may be, can be accurate, except by accident, when the basic figures to which the method is applied are largely estimates. This particular case is typical rather than exceptional, in that depreciation of either the entire property, as was the case with the observed depreciation study, or a large proportion of the property, as was the case with the present worth study, is either directly or indirectly estimated.

The determination of accrued depreciation is open to the additional objection that it varies, from time to time, depending upon the state of the art, the maintenance policy of the company, the accounting policy of the company with respect to arbitrary separation between maintenance and depreciation, and perhaps other factors. It is the opinion of the Department that a determination of existing depreciation is as illusory and conjectural as is the determination of a reproduction cost new appraisal.

It is sometimes contended that depreciation is, in fact, the amortization of property and that the amounts accrued for depreciation represent a return of capital, and should, for that reason, be excluded from the rate base. This contention is not sound because there can be no return of capital except where the money representing the capital investment has been returned to the investor. The investor does not get a return of his capital until the investment is retired.

The intricate problems of accrued depreciation which we have discussed are material in a "property value" determination of a rate base. They are, however, of no importance when "prudent investment" is given predominant weight in determining the value of the property.

In the application of the prudent investment standard, actual depreciation is of no consequence except as it is reflected on the book reserve of the company under consideration. The book reserve of respondent represents that portion of the physical property which it has recovered from its customers through rates charged for its services. In the application of the prudent investment standard, a downward adjustment in the book reserve would result in the allowance of capital in the rate base which had already been recovered by the respondent. It would, therefore, be unfair to the customers. An upward adjustment in such reserve would deprive the investors of the right to a return on capital

which had not actually been recovered by them through rates. Since the book reserve is excluded in the determination of a prudent investment rate base, there is no injustice to the customers if, in fact, the reserve is too high; nor does it deprive the investors of any capital on which they are entitled to earn a fair return, if in fact, the reserve is too low.

Prudent Investment Standard

[25–27] As hereinbefore stated, the Department has found that neither original cost less depreciation nor reproduction cost new less depreciation furnishes a reasonably adequate measure for the determination of a rate base in this case.

The prudent investment standard gained its greatest momentum and support as a result of the famous concurring opinion of Mr. Justice Brandeis in the case of Missouri ex rel. Southwestern Bell Teleph. Co. v. Public Service Commission, 262 US 276, 67 L ed 981, PUR1923C 193, 201, 43 S Ct 544, 31 ALR 807, decided May 21, 1923, in which Mr. Justice Holmes concurred, Justice Brandeis said: "The so-called rule of Smyth v. Ames (1898) 169 US 466, 42 L ed 819, 18 S Ct 418, is, in my opinion, legally and economically unsound. The thing devoted by the investor to public use is not specific property, tangible and intangible, but capital embarked in the enterprise. Upon the capital so invested, the Federal Constitution guarantees to the utility the opportunity to earn a fair return."

The prudent investment standard appears to have been adopted by the regulatory Commission and courts of Massachusetts for many years. It is there applied with notable satisfaction from the standpoint of both the public and the utilities. The successful application of this principle in Massachusetts and certain other states over a period of many years affords strong arguments for the application of that standard in this case.

The prudent investment standard is founded on sound economic and legal principles. The advantages to be derived from the proper application of such standards are manifold, both to the public and to the utilities. It is appropriate to discuss some of these beneficial results.

The prudent investment standard should be and is given major consideration in this case. It results in a rate base which is and will remain definitely certain subject only to future investments or reduction in fixed assets. Fluctuations in future price levels will not affect the rate base so determined, but appropriate adjustments will be made in the rate of return, to offset such fluctuation. The determination of the prudent investment is based upon facts, rather than upon opinions, estimates, or judgment, which, however honest they may be, are at best delusive and unreliable. The unreliability of estimates is conclusively demonstrated by the evidence in this record. Uncertainties and fluctuations will be reduced to a minimum, with a maximum benefit to the public and to the respondent.

From the standpoint of the public, the adoption of such a standard assures the public that it will pay only a reasonable rate for the cost of serv-

ice. The cost of rendering service will necessarily be limited to reasonable operating expenses and depreciation plus a reasonable return upon the capital prudently invested in the enterprise. The rates of the utility companies so limited assure the consumer that he is not paying upon any unearned increment, and is afforded the full protection to which he is entitled. This is the limit of the powers of regulatory bodies.

The customers of the respondent will be substantially benefited by the application of the prudent investment standard, because the relationship between the consumers and the respondent will be placed upon a more dependable basis. Future rate reductions when justified will be made immediately, rather than after prolonged proceedings such as has been experienced in this case.

The history of rate regulation reveals that it is not unusual for rate investigations to be legitimately extended over a period of many years without fault on the part of the public, the company or the regulatory body. The public suffers a great injustice in many ways by reason of such delays. The application of this standard in this case reduces to a minimum this very undesirable condition.

The advantage accruing to respondent by the application of the prudent investment method is apparent in this case. It will establish fair and equitable relations between the public and the utility that will be certain, permanent and dependable. Such relations with the public are the principal objectives of every public utility which is efficiently managed.

It is beneficial to respondent to eliminate those risks which are detrimental to its successful financial operation. While some degree of risk must necessarily attend all investments, any standard of principle which tends to reduce those risks will attract capital at a reduced cost. The Department is of the opinion that the proper application of the prudent investment standard in this case will bring about this desired result.

All of the witnesses who have testified on this subject have conceded either directly or by implication that the proper application of the prudent investment standard would result in a rate base which would be accurate, reasonable and equitable, both to the public and to the respondent.

The investor impliedly agrees when he invests his capital in a public utility that the charges or rates for service shall be just and reasonable to the public. He expects and is entitled to receive a fair return on his investment to compensate him for the outlay of his capital. To this extent the prudent investment concept affords him adequate protection. The existing investor receives all that he expected at the time he made his investment, and is deprived of no rights to which he is legally or morally entitled.

The Department finds that prudency in this connection should be weighed, not only in the light of what might be prudent from the viewpoint of the stockholders, but also from what might be prudent after giving

consideration to the fact that all return derived from the investment comes from the customers or potential customers of the company. It is conceivable that what might be prudent from the standpoint of a stockholder might work an undue hardship upon those actually furnishing the incentive —the consumers.

Finding of Rate Base

[28] The Department feels that it is not justified in adopting prudent investment as the fixed formula for determining the rate base, because of the language of our statute creating and empowering this Department and the holding of our supreme court. Yet, under the circumstances in this case, and after consideration of all of the pertinent factors, the Department is of the opinion that the amount prudently invested is the most equitable measure for the determination of such rate base. The Department feels that the best evidence in this record points to this amount prudently invested as a just measure of the fair value of the respondent's electric property. In determining this amount, the Department has been careful to strip from the respondent's books and records every item representing write-ups, stock-watering transactions or which do not represent existing value contributing to the improved service to the public, at reduced rates.

Having therefore determined that in this case the value of the respondent's electric property is most accurately and equitably measured by the amount prudently invested in its electric properties, the Department finds that the said prudent investment in this case is $47,996,290, determined as shown on the following tabulation, and the Department further finds that this amount shall be the rate base.

ARKANSAS DEPARTMENT OF PUBLIC UTILITIES

Computation of Prudent Investment in Electric Plant
December 31, 1943

Capital Stock			
Common and Preferred Stock	$26,579,250.00		
Capital Surplus	5,862.12		
Earned Surplus	1,092,176.19		
Total		$27,677,288.31	
Less:			
Remaining Write-up in Acct. 107	2,678,413.12		
Bond Discount and Expense Account 140	2,005,893.12		
Capital Stock Discount Acct. 150	75,814.12		
Reacquired Capital Stock Acct. 152	129,886.38		
Total		4,890,006.74	
Investment in Capital Stock			$22,787,281.57
Bonds, Acct. 210		31,269,000.00	
Misc. Long-Term Debt Acct. 213		17,952.00	
Investment in Long-Term Debt			31,286,952.00
Total Investment			$54,074,233.57
Electric Plant Acct. 100		54,357,699.67	
Less:			
Electric Plant in Process of Reclassification Acct. 100.6	1,602,033.36	1,602,033.36	
Balance		52,755,666.31	
Reserve for Depreciation or Retirement of Electric Plant Account 250		4,548,737.58	
Net Electric Plant			48,206,928.73
Electric Plant in Process of Reclassification Account 100.6		1,602,033.36	
Other Utility Plant Acct. 108		6,397,916.83	
Other Physical Property Acct. 110		27,124.17	
Investment in Associated Companies 111		25,000.00	
Other Investments Acct. 112		2,001.00	
Total		8,054,075.36	
Less: Reserve for Depreciation and Amortization of Other Property Acct. 253		1,949,592.00	
Net Other Plant			6,104,483.36
Net Total Plant			54,311,412.09
Ratio of $48,206,928.73 of $54,311,412.09			88.76%
Prudent Investment in Electric Plant, 88.76% of $54,074,233.57			$47,996,290.00

Determination of Rates

Rate of Return

[29, 30] The record shows and the Department finds that a rate of return of 6 per cent upon the value of the property used and useful in respondent's electric operation is a fair, just, and reasonable rate of return, both as to consumers and to the respondent and its investors.

The Department has found that the fair value of the respondent's electric property used and useful in its electric operations as of December 31, 1943, is $47,996,290, and that a rate of 6 per cent on that amount will afford it a reasonable rate of return. Therefore, the Department finds that $2,879,777 is the return herein allowed to respondent.

To this amount should be added $38,852 to cover the item of interest on electric customers' deposits required by regulations of this Department. The Department's Rules and Regulations Governing Public Utility Service require that each utility pay interest at the annual rate of 6 per cent on all deposits required of its customers. The primary purpose of any utility company in requiring deposits from its customers is to reduce losses on bad debts to a minimum. In the past the Department has made studies of the effect of deposit requirements on bad debt losses and has determined that the requirement of deposit from customers is in the public interest in that it materially reduces the losses on bad debts. The Department, therefore, finds that interest paid on the deposits of the respondent's electric customers should be added to the return allowed the respondent.

Estimate of Revenues and Expenses

Exhibits # 135, 142, 143, and 144 show respondent's estimates of the revenue and expenses of its electric operations for the year of 1944. This estimate was based upon three months' actual and nine months' estimated electric operations, and are as follows:

Item	Detail	Amount
Operating Revenues		
Residential	$3,325,000.00	
Rural	282,000.00	
Commercial	3,017,000.00	
Industrial	4,364,000.00	
Government and Municipal	3,028,000.00	
Sales to Other Electric Utilities	1,341,000.00	
Sales to Railroads and Railways	84,500.00	
Other Electric Revenues	58,500.00	
Total Electric Revenues		$15,500,000.00
Operating Revenue Deductions		
Operating Expenses	6,667,000.00	
Maintenance Expense	533,000.00	
Taxes	3,300,000.00	
Rent for Operating Property	345,000.00	
Retirement Reserve Appropriations	1,331,000.00	
Total Operating Revenue Deductions		12,176,000.00
Available for Return		$3,324,000.00

The Department's staff took no particular exception to the estimate of the respondent of its revenues and expenses for the year of 1944. It did, however, question the continuance of sales to the temporary "war loads" of the respondent. These sales are temporary in nature and dependent almost entirely upon the continuation of the present emergency. While the Department realizes any estimate of the length of time such sales will continue is highly conjectural, it believes that rates which are made for the future should be based upon the reasonably anticipated revenues and expenses in the future. The Department, therefore, finds that a reasonable estimate of the sales shown as "Governmental and Municipal" is $1,028,000.

A reduction in the estimated sales of the respondent carries with it a reduction in its purchased power requirements. The Department esti-

mates that the cost of purchased power of the respondent applicable to the estimated "war loads" sales not included in its computations will be $730,000 and it, therefore, finds that the respondent's estimated operating expenses should be reduced by that amount.

The respondent has estimated that its maintenance and property retirement provisions for the year of 1944 would be $1,864,000. The Department in another section of this order has found that $1,600,000 is sufficient to cover the items of depreciation and maintenance. It will therefore use $1,600,000 in this computation.

The Department's estimate of the electric operations of the respondent, after giving effect to the above-discussed adjustments and before state and Federal income tax computations, is as follows:

Item	Detail	Amount
Estimated Operating Revenues		$13,500,000.00
Estimated Operating Revenue Deductions		
Operating Expenses	$5,937,000.00	
Maintenance Expenses	533,000.00	
Taxes (Excluding Income Taxes)	1,200,000.00	
Rent for Operating Property	345,000.00	
Depreciation Expense	1,067,000.00	
Total Deductions		9,082,000.00
Balance Available for Income Taxes and Return		$4,418,000.00

Annual Depreciation and Maintenance Allowance

[31, 32] The record shows that from 1926 to 1937 the respondent operated under the "retirement reserve" policy. Exhibit #121 shows the respondent's record of annual retirements and maintenance, and further shows that its annual maintenance expenditures were substantially consistent, and varied, more or less regularly, with the total property being maintained and the current price of labor and material. There was a gradual increase in the maintenance expense from 1927 through 1943, with a slight decrease during the period from 1932 through 1934.

Retirements by the respondent as shown by Exhibit #121 have been comparatively irregular, but have shown a normal increase as the amount of retireable property increases. The respondent's property as a whole is comparatively young, and its experience in retirements is likewise comparatively limited. An analysis of the actual retirement experience gives little more than a slight indication as to the actual annual depreciation.

A witness testified that from the standpoint of past experiences, the respondent would require between $860,000 and $1,000,000 for actual annual maintenance expenditures and retirements, without giving any effect to the accruing depreciation in the property or the increase in labor and material costs. After giving effect to these additional facts, the witness testified that the annual amount necessary for depreciation and maintenance should be not less than $1,500,000, or about 3 per cent of the depreciable property, which is substantially less than was accrued in 1943.

The Department has determined elsewhere in this order that the steam-heat properties operated in connection with the steam generating plant at Little Rock should remain in the rate base for the reasons of expediency. The Department now finds that the net revenues derived from the steam-heat operations should be credited to the depreciation reserve to the end that an amount sufficient to write off this property, when it becomes impracticable to operate, should be provided for.

The record further reveals that the respondent, like all industry engaged in the war effort, has undoubtedly been handicapped in its maintenance program by lack of materials and manpower, and has been put to unusual strain to meet its demand, thus causing unusual maintenance. This alone would cause unusual expenditures for maintenance and depreciation as soon as materials and labor are available.

As previously explained, depreciation cannot be dissociated from maintenance or maintenance policies and the dividing line between them must of necessity be arbitrary. The annual allowance for maintenance and depreciation, therefore, should be such an amount as will assure efficient service to the public; and, at the same time, protect the integrity of the investment. Public interest requires that the property used in electric operations be maintained at the highest level of efficiency practicable.

We find that the existing book reserve of respondent represents that portion of the cost of property which has actually been recovered through rates. We will make a reasonable allowance of an amount sufficient to cover both maintenance and depreciation for the future. Out of this allowance, respondent shall be permitted to make such maintenance expenditures as its managerial judgment shall dictate, the balance of the allowance to be entered in the depreciation reserve.

It is realized that without prophetic powers, the exact amount necessary for these purposes cannot now be ascertained. Therefore, the allowance will be reëxamined from time to time in the light of experience and necessary adjustments will be made as the circumstances require, in order to protect the interests of both the public and the investors.

The adequacy of such allowance for depreciation depends on the amounts expended for maintaining the property. If respondent expends large amounts for the maintenance of its property, depreciation payments which the customers of respondent are called upon to make are correspondingly reduced. The distribution of the amount allowed, as between maintenance and replacements chargeable to depreciation, is a function of management; and, quite obviously, is affected by varying conditions existing from time to time. Since the Department quite properly has no management functions, it cannot make the day to day, month to month determination as to whether particular items of property should be maintained or replaced.

We are not justified, however, in allowing respondent substantial amounts for depreciation of its property at the expense of the customers; and, at the same time, giving management complete freedom with respect to maintenance.

We, therefore, conclude that the balance in the depreciation reserve, as of

December 31, 1943, applicable to electric property, of $5,154,627.22 represents the amount contributed by the ratepayers to cover depreciation which has not been restored by the respondent at that date, and, that the respondent should accrue an amount of $1,600,000, plus 3 per cent of the net additions subsequent to January 1, 1944, as the annual allowance for maintenance and depreciation, until further orders from this Department.

Finding of Rate Reduction

A determination of the excess net return of the respondent from its electric operations and the necessary reduction in gross revenues in order to effect this reduction in net revenue is shown below:

Return allowed	$2,879,777.00
Interest on Customers' Deposits	38,852.00
Total	$2,918,629.00

The above amount of $2,918,629 allowed by the Department is net after the deduction of state and Federal income and excess profits taxes. The Department has estimated that the net income before state and Federal income and excess profits taxes in order to produce the above net after taxes will very closely approximate $3,442,629.

The Department has found that the estimated net revenue of the respondent before state and Federal income taxes will be $4,418,000. The amount of the reduction in respondent's gross electric revenue is determined by the Department as follows:

Estimated Return	$4,418,000.00
Allowed Return	3,442,629.00
Indicated Reduction	$975,371.00

The Department, therefore, finds that the rates now charged by respondent are unjust, unreasonable, and excessive and that a reduction of $975,000 in the gross electric revenues of respondent should be effected.

Future Excess Revenue

[33] As hereinbefore noted, the Department has estimated the net revenues of respondent's electric operations, before income taxes, to be $4,418,000. This estimate is based upon respondent's estimate of revenues and expenses for the year 1944. The Department has also found, elsewhere in this opinion, the electric rate base of respondent and the fair rate of return thereon.

Based upon these findings, the Department has found that there should be a substantial reduction in the gross electric revenues so that the rates collected by respondent from its customers will be just and reasonable.

In making these findings, the Department has given careful consideration to the fact that this nation has been engaged, since December, 1941, in a World War which has brought about economic conditions never before experienced by the people. No one can predict the duration of the present conflict. Even in normal times, a prediction as to economic conditions which will prevail at any time in the future is highly conjectural. This uncertainty as to future conditions is magnified many times by the existing War.

During the period of the War, the revenues of the respondent will, in all probability, equal, if not exceed, the estimate of revenues upon which this order is based. During the readjustment period following the War, there

might result such a reduction in revenues of respondent as to make a rate increase necessary. Such a rate increase would come at a time when the customers would be least prepared to meet the impact of an increase in living expenses. The Department therefore finds that the public interest requires, and the Department will so direct, that respondent create a special reserve out of the excess gross electric operating revenues accruing to respondent during the period of the War, such special reserve to form a cushion against decrease in revenues and a corresponding increase in rates during the readjustment period.

The Department would be derelict in the perfomance of its duty if it failed to take every reasonable precaution to protect the interest of the public during the readjustment period which will necessarily follow the cessation of hostilities.

Fully mindful of the intricacy of the problem, the department has made what it believes to be a reasonably adequate provision to protect respondent's customers against an increase in rates which might otherwise be necessary by reason of a reduction in revenues of respondent during the readjustment period. The provision is also designed to protect the return of respondent during the readjustment period so that the return will, at all times, be fair and reasonable under the rate of return as fixed by this order. These provisions will appear in the order section of this opinion.

Miscellaneous Topics

Steam-heat Property

[34] The record properly shows that the steam-heat system which is operated in connection with the Little Rock generating plant, is theoretically not a part of the electric property. The operating costs are carried as electric operations, and cannot be separated with any degree of accuracy. The steam used by the system is a product of the electric operations, being exhausted from a turbo generator in the Little Rock power plant. This steam has value, and imposes a slight penalty on power generation. The employees of the power plant maintain and operate the steam-heat facilities.

The determination of the value of steam used in the steam-heat operations would be arbitrary and intricate to the extent that its accuracy would be extremely doubtful. The allocation of operating and maintenance payrolls and expense would be purely speculative. The gross revenues from steam-heat operations are less than three-tenths of one per cent of the gross electric revenues. In view of these facts and in view of the small amount of property involved, the Department finds it expedient to include the steam-heat property, together with the expense and revenues attributable thereto, with the electric system.

Working Capital and Material and Supplies

[35] In instances where a reproduction cost new is given dominant consideration in determining a rate base, allowance for working capital and material and supplies is added to the value of the property. In this case, we have measured the rate base by the amount which respondent had prudently invested in the enterprise. This method automatically includes all allowances necessary for a successful

operation, therefore it is not necessary to discuss the evidence with respect to cash working capital, etc., or to make any separate allowance therefor.

Fees Paid to Affiliates

(a) Phoenix Utility Company and Phoenix Engineering Corporations Fees

[36] The record in this case shows that the respondent paid to Phoenix Utility Company and Phoenix Engineering Corporation a remaining net amount of $442,511.01 as construction fees pursuant to the five contracts between the companies, evidence of which contracts appears in this record. These fees have been capitalized by the respondent as part of the original cost of construction of the respondent's property.

The Electric Power and Light Company at that time owned and now owns all the common stock of the Arkansas Power & Light Company. The Electric Bond and Share Company has at all times, since 1925, owned not less than 16.85 per cent of the stock of Electric and also all the common stock of the Phoenix Companies. The Phoenix Companies were nothing more than the construction department of the Electric Bond and Share Company. All of the companies were, and now are, affiliates of the Arkansas Power & Light Company within the definition contained in § 1(h) of Act 324 of the Acts of 1935.

The testimony shows that the respondent paid all expenses incurred by the Phoenix Companies including salaries, payroll, and material costs in connection with the construction work performed by the Phoenix Companies. The fees paid to the Phoenix Companies were based upon a percentage of the construction cost.

With reference to fees paid to the Phoenix Companies, this Department has previously held that "there can be no intercompany profits in such payments," and that such fees, in so far as they represent profits to the Phoenix Companies, "cannot be recognized as part of the investment." See Arkansas Power & Light Co. v. McGehee (1941) 42 PUR(NS) 65. This Department now reaffirms its finding in that case.

The fees herein considered were not the result of competitive bidding nor of arm's-length transactions. It has been recently held:

"Legitimate cost includes everything spent that would have been rightly spent if there had been but one corporation, but not profits charged by one wholly owned corporation against another." See Pennsylvania Power & Light Co. v. Federal Power Commission [1943] 52 PUR(NS) 275, 282, 139 F 2d 445.

This Department cannot approve capitalization of fees, as distinguished from cost, where such fees are paid in the circumstances of this case. It is true that Electric Bond and Share Company has not owned a majority of the stock of Electric at all times, but it is evident from the record in this case that Electric has at all times been controlled by Electric Bond and Share Company. It has been held that corporate control may exist without ownership of a majority of corporate stock. See Delaware & H. Co. v. Albany & S. R. Co. [1909] 213 US 435, 452, 53 L ed 862, 29 S Ct 540; and also United States v. Union P. R. Co.

[1912] 226 US 61, 95, 96, 57 L ed 124, 33 S Ct 53.

The Department will continue to hold that consumers should not be required to pay the company a return on an amount representing a profit which the company pays to itself, or to an affiliate, which is in the nature of an extra, sub rosa dividend.

The record in this case indicates that the fees paid to the Phoenix Companies pursuant to the contracts with the respondent were all profits and should, therefore, be excluded from investment.

The respondent has included all Phoenix fees as Engineering and Supervision. The elimination of these fees will result in an over-all percentage for Engineering and Supervision of approximately 5 per cent, which the Department believes is not unreasonable. Respondent has, however, made an urgent request that it be permitted a reasonable time within which to introduce further evidence showing what part, if any, of the remaining net fees represents legitimate construction cost to the Phoenix Companies. In its desire to afford the company every reasonable opportunity to fully develop its case, the Department has decided to grant this request in a manner which will not delay the issuance of this order and the resulting immediate reduction in rates hereinafter provided for. Provision is therefore made in this order for transferring the remaining net fees paid to the Phoenix Companies in the amount of $442,511.01 to Account 100.6 for further consideration by the Department.

(*b*) *Electric Bond and Share Fees*

The record shows that remaining net fees in the amount of $414,505.02 were paid by the company to Electric Bond and Share Company for services rendered pursuant to contracts between the two companies, evidence of which contracts appears in this record. These fees were based on a percentage of gross revenues of the respondent and allocated on a percentage basis between operating and construction expenditures.

What has heretofore been said with reference to fees paid the Phoenix Companies is applicable to fees paid to the Electric Bond and Share Company pursuant to these contracts. Although the record is silent on the subject, the Department is of the opinion that there is a possibility that some portion of the fees paid the Electric Bond and Share Company may have represented cost rather than profit. The Department is, therefore, making provision in this order that the remaining net fees in the amount of $414,505.02 paid to the Electric Bond and Share Company be transferred to Account 100.6 for further consideration by the Department.

Blakely Dam Lands

The record in this case shows that lands owned by respondent and designated as "Blakely Dam Lands" are carried in the accounts of this company as of December 31, 1943, in the amount of $745,017.33. This amount is carried under Account 110—Other Physical Property.

The Department's Uniform System of Accounts defines Account 110—Other Physical Property—as follows:

"A. This account shall include the cost to the utility of land, structures, and equipment owned by the utility,

but not used in utility service and not properly includible in account 100.4, Electric Plant Held for Future Use, or in Account 108, Other Utility Plant.

"B. The records supporting the entries to this account shall be so kept that the utility can furnish information as to the nature and cost of each kind of property, from whom it was acquired, its location, and its use."

The Uniform System of Accounts defines amounts in Account 100.4—Electric Plant Held for Future Use—as follows:

"A. This account shall include the original cost of electric plant owned and held for such service in the future under a plan, and property previously used by the utility in electric service, but retired from such service and held pending its re-use in the future, under a plan, in electric service.

"B. The property included in this account shall be classified according to the detailed accounts (301 to 393) for electric plant in a service and the account shall be maintained in such manner and in such detail as though the property were in service."

The testimony in this case is extremely meager as to the facts relating to Blakely dam lands. Mr. Kittleman, one of respondent's witnesses, was asked on cross-examination:

Q. Well, let me ask you specifically, referring to Exhibit 33, Mr. Kittleman, under Account 100.4, Electric Plant Held for Future Use, and then under that, you have Production Plant, and under that Hydro Production, $72,066.29. Does that amount relate to Blakely dam?

A. No, that has no connection with Blakely dam, whatever. All of the costs in connection with the Blakely dam that remain in the company's books are transferred out of Plant and Property Account, and debited down under Other Physical Property.

There is nothing in this record to show whether the Blakely dam lands are properly classifiable in Account 110—Other Physical Property, or Account 100.4—Property Held for Future Use. Respondent has urgently requested the Department to give it an opportunity to present competent evidence to show that, for the purpose of determining its rate base in this case, the amount attributable to Blakely Dam lands and now classified in Account 110 is properly classifiable in Account 100.4—Property Held for Future Use—and should be considered in the rate base determination.

The Department has found that it would be fair and equitable to grant this request of respondent with respect to the particular item; and, therefore, will order the amount applicable to Blakely dam lands transferred from Account 110 to Account 100.6 for further consideration and for such orders relating to the distribution thereof as the Department may find to be proper.

Conclusion

The Department finds that the rate base, the rate of return, and the rates based thereon, as established by this order, will enable the company to operate sucecssfully, to maintain its financial integrity, to attract capital, and to compensate its investors for the risks assumed, and will require the consumers to pay no more and no less than the services which they receive are reasonably worth.

MORRISON, Commissioner, concurring: I concur in the findings and the order adopted by my colleagues, but because a "decent respect to the opinion of mankind" requires reasons to be given for our conclusions, and because of the fact that the original cost concept of rate base determination is so completely foreign to all former thinking on this matter, I believe that it should receive a somewhat more detailed discussion with regard to the fundamental principles involved.

According to the circumstances involved in any particular case, original cost may or may not be the best measure of a rate base. For example, if the cost records of a property were kept under the Uniform System of Accounts and it were recently dedicated to public service, original cost would probably be the most accurate measure. But consider the following example: Recently this Department approved a sale of utility property for $5,000, the depreciated original cost of which was well over $30,000. It was a going concern, but it had lost its earning power through the migration of customers. In the latter instance original cost would be most unfair to the customers.

Whether original cost is or is not the best measure of rate base valuation is of no particular consequence, but when it is adopted as an exclusive formula, it becomes a matter of principle, and accordingly requires most careful consideration.

Estimated original cost stands on a different footing than actual original cost, regardless of whether the engineering or accounting approach be used. This has been discussed in the majority opinion, and will not be further discussed here.

One fundamental objection to the adoption of original cost as a formula is that it would be tantamount to abdication of discretionary powers of the regulatory body to some bookkeeper who made entries many years ago in accordance with his employer's directions and individual ideas as to what constituted a capital expenditure, long before the Uniform System of Accounts was established.

The effect would be to make accounting the master of regulation. Accounting should and can aid regulation greatly. But why should entries made by clerks twenty years ago carry more weight than the considered judgment of regulatory bodies based upon present as well as past facts and circumstances?

Mr. Justice Jackson said: "To make a fetish of mere accounting is to shield from examination the deeper causes, forces, movements, and conditions which should govern rates. Even as a recording of current transactions, bookkeeping is hardly an exact science. As a representation of the condition and trend of business, it uses symbols of certainty to express values that actually are in constant flux. . . . Few concerns go into bankruptcy or reorganization whose books do not show them to be solvent and often even profitable. . . . Our quest for certitude is so ardent that we pay an irrational reverence to a technique which uses symbols of certainty, even though experience again and again warns us that they are delusive. . . . As the apostle would put it, 'accountancy is all things to all men.'" (Dissenting Opinion, Federal Power Commission

v. Hope Nat. Gas Co. [1944] 320 US 591, 88 L ed 276, 51 PUR(NS) 193, 224, 64 S Ct 281, footnote 40).

The use of a formula permits one to escape the responsibility of exercising judgment. It is "a search for certitude."

The proponents of the original cost concept contend that the cost to the one first devoting the utility to public service is tangible. They contend that the excess over that figure is intangible; that intangibles represent a "capitalization of prospective earning power"; that such excess should either be (1) charged to surplus immediately, or (2) amortized in fifteen years or less, according to circumstances of the case.

It is true that intangibles represent capitalization of future earning power. It is equally true that the cost of tangibles represents capitalization of future earning power. That is true of everything that is bought for future use, regardless of whether it be tangible or intangible.

It seems at this point it would be well to define these terms. Webster's International Dictionary, 1937 Edition, defines tangible as "that which can be felt or seen," and intangible as the opposite.

In accounting, the term "tangible" is applied to the cost of physical property, and is called a tangible asset. The term "intangible" is applied to the cost which is in excess of that assigned to the physical property, and includes the rights or privileges acquired. Both classifications of cost—tangible and intangible—represent the total cost of the earning entity.

The basis of all accounting is cost. The only relation that cost has to value is the presumption that reasonably prudent men do not expend costs without receiving value. Therefore the recorded costs may be considered as a prima facie showing of value.

However, value is something distinct from cost. That it is in a constant state of fluctuation is not only admitted by original cost advocates, but is offered as a reason why cost at the time of public dedication should be selected as the permanent basis of value.

It seems illogical to select any particular point in the curve of value fluctuations and to attempt to freeze the value at such point.

By what process of reasoning can it be maintained that because value fluctuates we will not recognize the fluctuations? It could be as logically maintained that because the colors vary in the rainbow that the whole rainbow is blue. An early English king tried by a similar edict to stop the tidal fluctuations with a broom.

What is value? Webster's, *supra*, defines value to be "a fair return in money, goods, services, etc., for something exchanged."

In connection with determining the worth of property, there are two kinds of value, viz.: exchange-value—"that which can be received immediately in the market," and use-value, "that which can be received from the use of property as distinguished from its sale."

Exchange-value and use-value may not be closely related in worth. For example, it is not unusual for an article purchased in a junk yard at junk prices to serve the buyer just as effectively as a new article costing many times more. Use-value can only be an intangible value. It relates primarily to the fu-

ture. While property can be used in the present, nevertheless the ratio of present use to future use is so small as to be negligible.

When a public utility purchases poles, conductors, etc., the articles bought have a definite exchange-value at the time of their purchase. This value is measured by the price paid. The moment the poles are put in place, the conductors strung, etc., the exchange-value of those individual items of property becomes greatly diminished. This is true because the expense of wrecking, sorting, and delivering to market of the individual poles, conductors, etc., would have to be deducted from their exchange-value at the market. Therefore, whenever physical property is put in place by a utility, a large portion of the exchange-value of those individual items disappears immediately. The only way that a utility can recover the exchange-value—cost—that it has previously expended for these items, is by using the property. It can only recoup all of its cost from use.

If there were a free market for the purchase and sale of utilities as going concerns, it would be possible to have exchange-value of the utility as a whole, but even so, there would be no greater exchange-value of the component parts if they were dissociated from the whole. But there is no free market for the purchase and sale of utilities. Therefore there is no determinable exchange-value of utilities as such.

The original cost advocates recognize only the exchange-value or cost of the physical properties at the time of their public dedication.

Now, if exchange-value is to be the only value in the rate base of a utility, then the tangible value of any utility would be its scrap, or salvage value, because as we have seen, everything above this amount is intangible. This is the logical conclusion of the original cost premise. No reasonable person, much less a court, would accept such a conclusion.

As before stated, the moment physical property is put in place by the utility, its exchange-value—called tangible—is reduced to its salvage or scrap value. If a utility be allowed to retain on its books that portion of its cost that it paid for the property identified as original cost, a very large portion of that figure carried on its books as a tangible asset—original cost—has only an intangible value. All of the excess of original cost of the property over its salvage value represents only intangible value.

Actually, there can be no salvage value so long as the property continues to be used by the owner. Salvage becomes available only upon cessation of use.

Is it not obvious that it is impossible under any theory of accounting to purge "intangibles" from the records of a utility? Intangible values exist in every rate base, whether or not their existence as such be recognized.

It might be asked then; what is the use of segregating original cost upon the books of the company? Although the answer to that question is obvious, it seems to have been wholly lost to sight, mid the hectic disputes that are currently in progress in which cost and value are confused.

The answer is quite simple. While it is true that the only value of the

utility is intangible—use-value, nevertheless the various items of physical property must be retired and replaced from time to time. Retirements and replacements can only be had upon the basis of exchange-value or market cost. Therefore it is necessary to devise some means of accruing depreciation that is definitely related to exchange-value. Thus the accounting segregation of the original cost of physical property upon the utility's records serves that important purpose.

This is not the first time that the question of intangible assets has been considered by a governmental agency. It has arisen frequently before the Bureau of Internal Revenue. The Bureau permits deduction from income of reasonable depreciation charges. Companies whose books reflected intangibles which were coterminous with the life of the company have been denied the right to depreciate or amortize these intangibles and to make a deduction therefor from their income tax.

Vide United States in Metropolitan Nat. Bank v. St. Louis Dispatch Co. (1893) 149 US 436, 37 L ed 799, 13 S Ct 944, and many other cases and departmental rulings.

The basis of this action is that intangibles, excluding those of limited term such as patents, franchises, etc., do not depreciate, but continue to exist so long as the company is a going concern. This is a sound conclusion.

If for income tax purposes intangibles exist so long as a company exists, how can a regulatory body deny their existence for rate-making purposes?

It is generaly recognized that entries on books do not affect value, either to increase or to diminish it. The bank that has charged its furniture and fixtures down to $1 has just as valuable furniture and fixtures as though the original cost of those items were recorded upon its books. Or again, the farmer that keeps no books at all has just as valuable livestock as if their cost were entered in a book. Correspondingly, write-ups do not increase the value of the property by one cent.

Books of account record the costs of the enterprise. To that extent they give some indication of its condition. A thermometer records the temperature of the weather. To that extent it gives some indication of its condition. While it is important to have an accurate index in either instance, yet each index reflects the condition; it does not cause it.

It would be just as reasonable to say that the thermometer reading on a given date is the temperature for all time thereafter as to say the values reflected by the recorded costs of a given date reflect all value thereafter.

But, in the field of utility regulation, if the recorded entries representing existing values be arbitrarily written down, and no return be permitted thereon, then such values are destroyed completely through the loss of earning power.

The justification of such practice is claimed by the fact that utilities are monopolies, and by the claim that "intangibles" are created by the public. For these reasons it is claimed that the utility should not be allowed to earn a return upon such values.

Why was a utility granted a monopoly in the first place? Simply because experience has proven that in the business where the ratio of fixed assets in relation to its annual income is high, that the consumer receives

cheaper rates and better service when no duplication of facilities was permitted.

Monopolies in the utility field came as the result of experience and the ever present public demand for better and cheaper service.

The public likewise found from experience that freedom from competition was dangerous, so it set up regulatory bodies as a substitute for competition.

The public does not create intangible values. It only uses them. Someone must first plan and build the facilities, and then induce the public to use them. The claim of monopoly and the public creation of intangibles is clearly erroneous as a reason for dismissing intangible values.

The original cost concept is at absolute variance with our American economy, which is based upon the individual receiving the fruits of his own labor and enterprise. If any argument were needed as to the effectiveness of our system, the comparison of our war production with that of other nations which have different economies, would settle all doubt.

Original cost undertakes to eliminate arm's-length profits. It is not only opposed to our economy, but it is fundamentally unsound. It either must be abandoned in the utility field as a formula, or it must be adopted in other fields of business, because it is as true in our economy as it is elsewhere that "a house divided against itself cannot stand."

In view of the dangerous implications to the other fields of our American economy, and in view of the statements above set forth, I concur with the majority in its refusal to adopt original cost as an exclusive formula for rate base determination.

NEW YORK PUBLIC SERVICE COMMISSION

Re Rochester Transit Corporation et al.

Case No. 11,545
July 11, 1944

APPLICATION *for approval of transfer of franchises, consents, and rights by a nonoperating corporation to a transit company; granted.*

Franchises, § 50 — Assignment — Public interest — Rights of stockholders.

1. The Commission, in passing upon an application for approval of the transfer of franchises, consents, and rights to operate transportation facilities, is primarily concerned with whether or not the proposed transfer will be beneficial to the public who use the route covered by such rights rather than the conflicting rights of majority and minority stockholders in the corporation transferring such rights, p. 190.

Franchises, § 50 — Assignment — Nominal consideration — Minority stockholders.

2. An assignment for a nominal consideration of franchises, consents, and operating rights by a corporation no longer operating but leasing such rights to the assignee for operation of busses should be approved as in the public interest when the lease has expired, there is no proof of cost of such rights, the lease is no longer needed but imposes an excessive rental upon the operating company, the operating company owns most of the stock of the other company, and the only objection is that of minority stockholders, p. 190.

BURRITT, Commissioner: The Rochester Electric Railway Company is a domestic corporation organized under the Transportation Corporations Law of the state of New York. It formerly owned and operated about 4½ miles of double track street railway between Lewiston avenue (Ridge road), formerly the northern boundary of the city of Rochester, and the shore of Lake Ontario at Charlotte.

The Rochester Transit Corporation operates an omnibus system in the city of Rochester as successor to the New York State Railways. Among the omnibus routes operated by Rochester Transit Corporation is the above route between Lewiston avenue and Lake Ontario, which is operated under a 50-year lease from Rochester Electric Railway. This lease expires June 30, 1944.

The stock of Rochester Electric Railway Company consists of 2,000 shares of a par value of $100 each, all issued and outstanding. Of these issued shares Rochester Transit Corporation owns 1,776, or 88.8 per cent, leaving 224 shares, or 11.2 per cent, in the hands of twenty-one individual stockholders. These shares are held in lots of from one to 62 shares, 196 shares being held by eight individuals each of whom owns 10 shares or more. Rochester Transit Corporation therefore controls the Rochester Electric Railway Company through ownership of a majority of its stock.

On May 10, 1943, subject to the approval of this Commission, the Rochester Transit Corporation made an offer to purchase the 224 shares of stock owned by others, at $40 per share, and applied to this Commission for permission to acquire such 224 shares of the stock of Rochester Electric Railway Company.

The Commission found (opinion approved August 3, 1943 in Case 11,225) that the stock was not worth $40 and that its approximate value was only $31 per share. The case was kept open to enable the petitioner to amend its application in accordance with the Commission's findings, but no amended petition has been filed. In connection with this prior application counsel representing the Transit Corporation stated that it had no intention of renewing the lease and that if it could not acquire the balance of the stock of the Rochester Electric Railway Company, the majority stockholder would take steps to dissolve that company.

In the petition herein it is stated that at a duly convened meeting of the stockholders of Rochester Electric Railway Company held October 25, 1943, by a two-thirds vote, it was re-

solved to dissolve the Rochester Electric Railway Company and to transfer its rights and franchises to Rochester Transit Corporation for a nominal consideration, subject to the approval of this Commission. This petition for the approval of such transfer is preliminary to the dissolution of the Rochester Electric Railway Company. A copy of the proposed assignment, which is made in consideration of one dollar and other valuable consideration, is attached to the petition as Exhibit 1.

Franchises to Be Transferred

There are attached to the petition duly certified copies of the several franchises, consents, and rights proposed to be transferred from Rochester Electric Railway Company to Rochester Transit Corporation. These are also listed in the petition, above referred to. These franchises, consents, and rights were granted by the former village of Charlotte (now a part of the city of Rochester), the town of Greece, and by the city of Rochester. None of the franchises has an expiration date, and apparently they are all perpetual. Particular attention is called to an ordinance of the city of Rochester adopted at a meeting of the common council of the city held April 7, 1940, which granted permission to the Rochester Electric Railway Company to substitute busses for cars on tracks pursuant to § 50-a of the Public Service Law; and that this consent was approved by this Commission in Case 10,171 (1940) 36 PUR(NS) 161.

The greater part of the operations of the Rochester Electric Railway was on private right of way on either side of Lake avenue from the old city line at Lewiston avenue to Lake Ontario. The public franchises granted were generally for crossovers between the two sides of Lake avenue. Rochester Transit Corporation now operates busses over this same route but in the public streets rather than on the private rights of way, as was authorized by resolution of the Rochester City Council in 1940, noted above. There will be no changes whatever in any of these operations. Subsequent to the making of the lease Rochester Transit Corporation was authorized to make an extension westerly along the lake front at the northerly end of the leased Rochester Electric Railway line. One effect of the proposed transfer if authorized will therefore be to connect up two otherwise unconnected lines owned by the Rochester Transit Corporation. The transfer of these franchises will give Rochester Transit Corporation the complete right to operate over this route.

Mr. Leonard G. Toomey, auditor and controller of the Rochester Transit Corporation, appeared as a witness and testified that the books of the Rochester Electric Railway Company show no cost of acquisition of the franchises. Hence it is proposed to transfer the property at a nominal cost of one dollar. Under the terms of the expiring lease the lessee was required to maintain the property, and after busses were substituted for cars on tracks the physical operating property of the Rochester Electric Railway Company was sold for scrap, and the difference between the proceeds of the sale and the cost as shown by the books was charged to surplus account.

Income Statement and Balance Sheet

The operating revenues, expenses, and taxes of the Rochester Electric Railway Company were received in evidence. This exhibit shows revenues for the past three years, as follows:

Operating Revenues, Expenses, and Taxes
Rochester Electric Railway Company

	1941	1942	1943
Operating revenue	$25,836.65	$30,777.00	$40,296.92
Less Federal Income Taxes (paid by Lessee)	3,674.62	7,212.47	12,384.15
Net Revenue to Stockholders	$22,162.03	$23,564.53	$27,912.77

The operating revenue as shown above includes rental paid by the Rochester Transit Corporation direct to the stockholders in accordance with the terms of the lease, less Federal income taxes. All other taxes on the property were paid by the lessee in accordance with the terms of the lease. Revenue also includes a small amount of interest on deposited money received from the scrapping of the rails.

The balance sheets of Rochester Electric Railway Company for the fiscal year of 1943 and for the last available year, follow:

Balance Sheets
Rochester Electric Railway Company

	Fiscal Year Ending Dec. 31, 1943	Latest Available Year April 15, 1944
Assets		
Cash	$33,259.85	$35,259.85
Deferred Debits		
Estimated Remaining Salvage	500.00	.....
Deficit	166,240.15	164,740.15
Totals	$200,000.00	$200,000.00
Liabilities		
Capital Stock Common	$200,000.00	$200,000.00
Totals	$200.000.00	$200,000.00

The cash in the 1943 balance sheet represents the proceeds of the sale of the rails and trolley wire of the old streetcar line, plus a small amount of interest on deposits. The $500 was the estimated value of a small lot at Charlotte. This lot was listed with a real estate broker for over two years without an offer. In 1914 after appraisal by three appraisers in the city of Rochester it was sold to the Railway Properties Corporation, a subsidiary of the Rochester Transit Corporation holding its nonoperating properties, for the sum of $2,000, an amount greater than the average of the three appraisals. In the April 15, 1944, balance sheet the sale of this lot is reflected in cash. There will be a small additional amount of revenue due after June 30th from rental, due to the provision in the lease that the lessor shall receive 25 per cent of the income from the line in excess of $55,000.

Objections to the Transfer

[1, 2] Mr. Clarence S. Lunt, a

minority stockholder, appeared at the hearing and objected to the approval of the transfer of the franchises on the ground that the company had not properly accounted for parts of the rentals (the 25 per cent of excess of $55,000 of revenues) under the lease, and to the transfer of the lease at the nominal amount of $1, until the company renders an accurate accounting under the terms of the lease. There is little doubt that the continuation of the lease on the old basis would be much more advantageous to the stockholders than the liquidation of the company.

The Rochester Transit Corporation, majority stockholder of the Rochester Electric Railway Company and the lessee of its line, denies that the rentals have not been properly accounted for. It affirmatively asserts that they have been properly accounted for, accepted by the directors of the company, and by the stockholders at the regular meetings of the company. In cases of this kind the Commission is primarily concerned with whether or not the proposed transfer will be beneficial to the public who use the route for public transportation. While payment of large rentals of the operating company would obviously be desirable from the viewpoint of the stockholders of the lessor company, such payments would inflate operating expenses of the operating company and to that extent would be detrimental to the general public interest.

This question was passed upon by the Commission in the application of Binghamton Light, Heat & Power Company for consent to the transfer of its electric franchise, works, and system to the New York State Electric Corporation in Case 5710 (Nov. 26, 1930). In that opinion, approved by the Commission, Commissioner Van Namee stated:

"This Commission is not a forum wherein the conflicting rights of majority and minority stockholders in corporations under its jurisdiction are settled. The Commission is powerless to discharge the functions of a court of equity. Differences between various interests in corporations are to be settled in courts of law. The Public Service Commission is an administrative body established by the legislature for the paramount purpose of protecting and enforcing the rights of the public, and the statutes creating the Commission should be construed with that end in view. People ex rel. New York Steam Co. v. Straus, 186 App Div 787, PUR1919C 1014, 174 NY Supp 868, affirmed, without opinion [1919] 226 NY 704, 123 NE 884; People ex rel. New York Teleph. Co. v. Public Service Commission [1913] 157 App Div 156, 141 NY Supp 1018.

The proof clearly shows that there is no cost recorded on the books of the Rochester Railway Company for securing the franchises, consents, and rights of that company despite protestant's assertion that the lease is "worth a great deal of money." No proof of such worth or cost was offered in evidence. The law prohibits the capitalization of rights granted to operating companies by the public, and the Commission has consistently followed the policy of excluding from capitalization other than the actual legitimate costs of obtaining the franchises or rights.

The city of Rochester appeared at

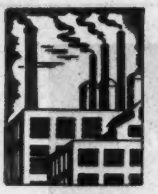
the hearing by its corporation counsel, and offered no objection to the transfer.

In my final report on the substitution of busses for cars by this corporation dated September 30, 1940 (Cases 10,171 and 10,172), 36 PUR (NS) 161, 173, the following recommendation regarding the Rochester Electric Railway Company lease was made:

"5. The substitution of busses for cars on track on the Rochester Electric Railway as such, is also in the public interest. Unfortunately the lease of this property to Rochester Transit Corporation which does not expire until June 30, 1944, provides for a rental of at least $16,000 (8 per cent on $200,000 of capital stock). Under present conditions this is certainly a very excessive rental. Moreover, due to the provision that all rights and privileges and franchises acquired shall become the property of the Rochester Electric Railway, there does not seem to be anything that the Commission can do about this lease until it expires in 1944. Any proposed renewal must then be passed upon by the Commission. There is no doubt that it would be in the public interest if this lease were canceled at once. Since the Transit Corporation owns more than 88 per cent of the stock of the Electric Railway Company, and is therefore dealing with its own subsidiary, it could, and I believe should, effect the cancellation of this lease at the earliest possible time and dissolve the Rochester Electric Railway Company which is no longer necessary for transportation service on Lake avenue in Rochester."

This lease has served its purpose. It is no longer needed. The Rochester Transit Corporation has no intention of renewing it. If the existing franchises of Rochester Electric Railway were not transferred to the Rochester Transit Corporation the latter doubtless could obtain another and direct franchise from the city of Rochester, as it would be decidedly in the interest of the riding public to grant such a franchise rather than to continue the excessive rental under the old lease. The Rochester Transit Corporation will be relieved of the annual rental cost of an amount averaging about $25,000 a year. Even if it were proposed to continue the lease, the interests of individual stockholders weighed against the general public interest would not warrant the disapproval of the proposed transfer.

I find that the proposed transfer of the franchises, consents, and rights of the Rochester Electric Railway Company is in the public interest and I recommend that it be approved. An order is submitted accordingly.



Industrial Progress

Selected information about products, supplies and services offered by manufacturers. Also announcements of new literature and changes in personnel.

New Promotion Director of the "CP" Gas Range Program

THE appointment of James I. Gorton as promotion director of the "CP" Gas Range Program, has been announced by Lloyd C. Ginn, chairman of the "CP" Gas Range Manufacturers Division of the Association of Gas Appliance & Equipment Manufacturers.

Based on the increasing interest shown in the "CP" program by utilities and dealers, manufacturers of ranges bearing the "CP" seal announced an increase in their promotional budget for the first six months of 1945 at a recent meeting held in New York city.

The major part of the "CP" advertising appropriation will be used to support the $6,000,000 national and local newspaper advertising program now being carried on by the gas industry.

A dealer promotional package will be available to utilities for distribution to their dealers.

Ninety-five per cent of all gas utilities have indicated their intention of aggressively promoting gas ranges bearing the "CP" seal.

R&IE Representative Named

J. B. CHARTRAND, of Electrical Equipment Company, distributors in Cleveland, Ohio, has been recently appointed sales representative for the Railway and Industrial Engineering Company, covering the immediate district of Cleveland.

New Arkansas Natural Gas Head

D. W. HARRIS of Shreveport, Louisiana, was elected president of the Arkansas Natural Gas Corporation at the annual meeting of directors in New York.

Mr. Harris has served as vice president and general manager of the company and its subsidiaries, Arkansas Fuel Oil Company, Arkansas Louisiana Gas Company, and Arkansas Pipeline Corporation, since 1928.

The new president of Arkansas Natural Gas has held several official positions with Cities Service Company, and its subsidiaries in Denver, Bartlesville, Oklahoma, and in New York. He is a director of the American Gas Association, a member of the Bankers Club of New York and has been active in all affairs of the oil and gas industry.

Attains Rights, Title, Interest

ACQUISITION of all rights, title and interest in the corporate name and trademark of the U. S. Postal Meter Corporation marks another step in the expansion program of Commercial Controls Corporation of Rochester, New York.

Under a purchase agreement which went into effect on October 2nd, the Rochester firm also took over all sales and service rights on machines and meters already manufactured by the former company.

As a result of the transaction the mailroom equipment division of the Rochester corporation will be known as the U. S. Postal Meter Division of Commercial Controls Corporation. Another department of the firm, the Ticketograph Division, manufactures Ticketograph Pay and Production Control Systems for use in industrial plants.

Withholding Tax Aid

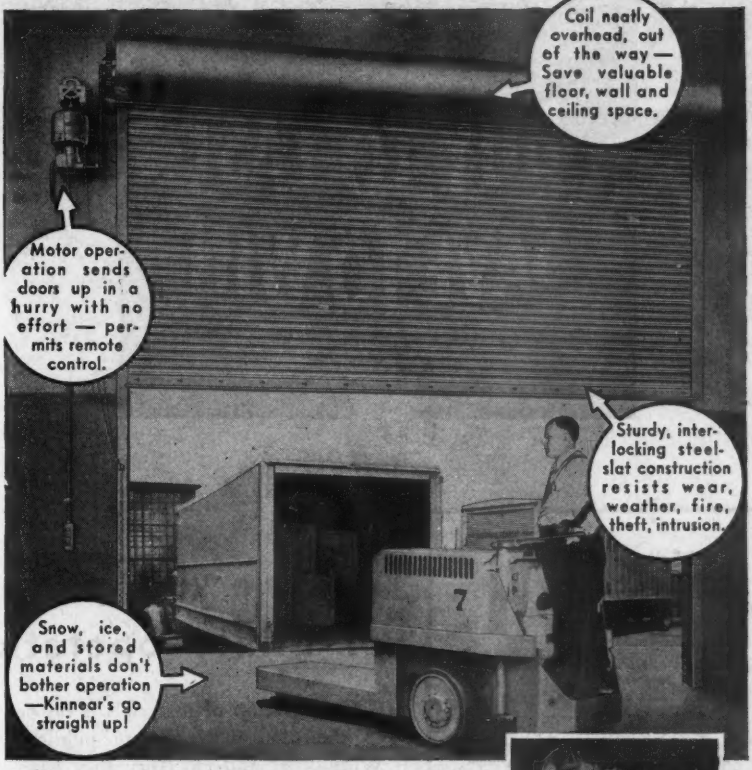
EMPLOYEES whose payroll handling may be further complicated when the Individual Income Tax Act of 1944 goes into effect on January 1st will be interested in a timely 30-page booklet entitled "Payroll Peaks" issued by Burroughs Adding Machine Company, Detroit 32, Michigan.

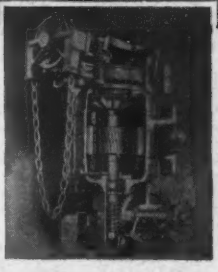
On the first pages, this booklet carries a pictorial review of peaks in the growth of the payroll job from the enactment of the Income Tax Law of 1913 to the present withholding tax period.

From this pictorial review, the booklet proceeds through the remaining pages to illustrate and describe individual plans in actual operation today. Thus, it gives a variety of practical suggestions built up from experience gained as the various problems have arisen.

The booklet is available on request.

Install KINNEAR ROLLING DOORS and gain these advantages!





When you install Kinnear Rolling Doors you gain more than smooth, easy operation. Kinnear Rolling Doors coil overhead, out of the way, offering valuable savings in floor, wall and ceiling space. The sturdy, interlocking steel-slat construction discourages theft and intrusion; repels fire and the elements. Kinnear durability has been proved—doors in continual use for 20, 30, and even 40 years are still giving the same efficient service. Motor operation enables you to raise doors quickly by merely touching a button, thus saving time and labor. Push-button control cuts operating and air-conditioning cost by reducing the tendency to leave doors open. For efficient time- and labor-saving doorways, write for full details on Kinnear Rolling Doors. **The Kinnear Manufacturing Company, 2060-80 Fields Ave., Columbus 16, Ohio.**

Saving Ways in Doorways
KINNEAR
ROLLING DOORS

Save to Win
with these four simple rules
of battery care:

1. Keep adding approved water at regular intervals. Most local water is safe. Ask us if yours is safe.
2. Keep the top of the battery and battery container clean and dry at all times. This will assure maximum protection of the inner parts.
3. Keep the battery fully charged—but avoid excessive over-charge. A storage battery will last longer when charged at its proper voltage.
4. Record water additions, voltage, and gravity readings. Don't trust your memory. Write down a complete record of your battery's life history. Compare readings.

If you wish more detailed information, or have a special battery maintenance problem, don't hesitate to write to Exide. We want you to get the long-life built into every Exide Battery. Ask for booklet Form 3225.

Exide
CHLORIDE
BATTERIES

. . . is a vital principle of utility opetation

Conservation of materials is no new story to the men who operate public utilities. With thrift and efficiency they have always planned for conservation.

They've squeezed the last ounce of use out of materials and equipment in their care . . . and today, that need is intensified.

One helpful principle to follow is that of "Buy to Last—Save to Win." Buy quality products and equipment, then care for it to avoid needless replacement. That conserves raw materials, labor, and space in factories. It frees these productive elements for essential war production.

THE ELECTRIC STORAGE BATTERY CO.
Philadelphia
Exide Batteries of Canada, Limited, Toronto

—Official U. S. Marine Corps Photo

To facilitate unloading of LSTs and other craft on Emirau Island in the South Pacific, the Seabees with their International Diesel TracTracTors and bulldozers built the road you see here, as well as a dock.

Road building is only one of many jobs International TracTracTors are handling in this war like seasoned veterans.. In keeping with true Seabee tradition, **they build and they fight.**

While these tractors are fighting on the battlefront, it's up to all tractor operators to conserve equipment here on the home front. **Make it last!** Harvester and the International Industrial Power Distributors stand ready to see industrial equipment users through this emergency.

INTERNATIONAL HARVESTER COMPANY
180 North Michigan Avenue Chicago 1, Illinois

INTERNATIONAL HARVESTER
Power for Victory . . . Power for Peace

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PROFESSIONAL DIRECTORY

• This Directory is reserved for engineers, accountants, rate experts, consultants, and others equipped to serve utilities in all matters relating to rate questions, appraisals, valuations, special reports, investigations, design, and construction. « « «

PROFESSIONAL DIRECTORY
(*continued*)

(Professional Directory Continued on Next Page)

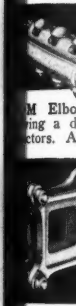
PROFESSIONAL DIRECTORY
(continued)

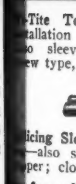
PROFESSIONAL DIRECTORY
(concluded)

INDEX TO ADVERTISERS

[The Fortnightly lists below the advertisers in this issue for ready reference. Their products and services cover a wide range of utility needs.]

* Fortnightly advertisers not in this issue.





A General Manager writes from Iowa

"In looking over our experience during the past years I can readily see where, in practically all cases, we could have adapted our requirements to enable us to use a standardized product."

BECAUSE the word "standardization" has so many meanings, some of the advantages to the buyer of the *particular type of standardization* which G.E. has proposed for heavy power apparatus may be overlooked. One of the advantages is that the utility company's own engineering talents will be released for the further improvement of system economics.

The standardization we propose is not a "quality freeze" in the sense that a "Grade A" is established for all time. It allows for continual betterment from model to model, based on the service experience of many users. And it aims to produce models of *greater adaptability*.

The skillful application of these models within a power system is a task with considerably greater economic possibilities, we believe, than the arrangement of parts in a single unit.

The writer quoted above recognizes the long-range advantage of this type of standardization to his engineers. He also said: "I am very much in favor of the manufacturers working out a program along this line." *General Electric Co., Schenectady, N. Y.*

Every week 192,000 G-E employees purchase more than a million dollars' worth of War Bonds.

GENERAL ELECTRIC

201-110E-170